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• *By the Students*

• *Of the Students*

• *For the Students*

LABOUR & INDUSTRIAL LAW

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Labour & Industrial Law

Q. Define 'Factory' and 'worker' as defined under the Factories Act, 1948.

FACTORY

Section 2(m) of the Factories Act, 1948 defines "factory".

"Factory" includes any premises including the precincts thereof

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or

(ii) whereon twenty or more workers are working, or were working on a day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union or a railway running shed, or a hotel, restaurant or eating place.

Explanation I: For computing the number of workers for the purposes of this clause, all the workers in different groups and relays in a day shall be taken into account.

Explanation II: For the purposes of this clause the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

Essential elements of a factory:

(1) There must be a premises.

(2) There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises.

(3) There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

The following are not covered by the definition of factory:

(i) Railway running sheds, (ii) mines, (iii) mobile units of armed forces, (iv) hotels, eating places or restaurants.

Meaning of words "premises and precincts"

The word "premises" is a generic term meaning open land or land with building or building alone. The term 'precincts' is usually understood as a space enclosed by walls. Expression 'premises' including precincts does not necessarily mean that the premises must always have precincts. It merely shows that there may be some premises with precincts and some premises without precincts. The word 'including is not a term' restricting the meaning of the word 'premises', but is a term which enlarges its scope. All the length of railway line would be phase wise factories (**LAB IC 1999 SC 407**). Company engaged in construction of railway line is factory. (**LAB IC 1999 SC 407**).

The Supreme Court in **Ardeshir H. Bhiwandiwalla v. State of Bombay, AIR 1962 S.C. 29**, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word 'premises'.

Manufacturing process is being carried on or ordinarily so carried on

The word ordinarily came up for interpretation in the case of **Employers Association of Northern India v. Secretary for Labour U.P. Govt.** The question was whether a sugar factory ceases to be a factory when no manufacturing process is carried on during the off-season. It was observed that the word 'ordinarily' used in

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the definition of factory cannot be interpreted in the sense in which it is used in common parlance. It must be interpreted with reference to the intention and purposes of the Act. Therefore, seasonal factories or factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act.

Ten or twenty workers

The third essential content of 'factory' is that ten or more workers are employed in the premises using power and twenty or more workers are employed in the premises not using power.

Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since three temporary persons were workers, consequently there were ten workers working in the 'premises' and the premises is a factory (**AIR 1959, All. 794**).

According to explanation to Section 2(m), all the workers in different relays in a day shall be taken into account while computing the number of workers.

Bombay High Court held that the fact that manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the case out of the definition of the word 'factory' which says that manufacturing process can be carried on in any part. The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity (**Bharati Udyog v. Regional Director ESI Corpn., 1982 Lab. I.C. 1644**).

A workshop of Polytechnic Institution registered under the Factories Act imparting technical education and having power generating machines, was carrying on a trade in a systematic and organised manner held, it will come under the definition of factory as defined under Section 2(m) read with Section 2(k) (**1981 Lab. I.C. NOC 117**).

WORKER

"Worker" means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union. [Section 2(l)]

The definition contains following ingredients:

(i) There should be an 'employed person'

(a) Meaning of the word "employed": The concept of "employment" involves three ingredients, viz. employer, employee, and contract of employment. The 'employer' is one who employs, i.e., one who engages the services of other persons. The 'employee' is one who works for another for hire.

Therefore, 'supervision and control' is the natural outcome when a person is employed by another person. Moreover, the 'employment' referred to in the section is in connection with a manufacturing process that is carried on in the factory which process normally calls for a large measure of coordination between various sections inside a factory and between various individuals even within a section. The persons will have to be guided by those placed in supervisory capacity. A certain amount of control is thus necessarily present in such a case.

In **Shankar Balaji Waje v. State of Maharashtra, AIR 1963 Bom. 236**, the question arose whether bidi roller is a worker or not. The management simply says that the labourer is to produce bidies rolled in a certain form. How the labourer carried out the work is his own concern and is not controlled by the management, which is concerned only with getting bidies rolled in a particular style with certain contents. The Supreme Court held that the bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where

the employer did retain direction and control over the workers both in manner of the nature of the work as 'also its details they will be held as workers.

A day labourer, where there was no evidence to show that he was free to work for such period as he likes, free to come and go whenever he chose and free to absent himself at his own sweet will, was held to be a worker. Similarly, women and girls employed in peeling, washing etc., of consignment of prawns brought on the premises at any time of the day or night, without any specified hours of work and without any control over their attendance or the nature, manner or quantum of their work and who after finishing the work go to other premises in the locality where similar consignment of prawns are received, are not Workers (**State of Kerala v. R.E.DSouza**).

(b) Whether relationship of master and servant necessary: The expression "employed" does not necessarily involve the relationship of master and servant. There are conceivable cases in which where no such relationship exists and yet such persons would be workers. The expression a person employed, according to Justice Vyas, means a person who is actually engaged or occupied in a manufacturing process, a person whose work is actually utilised in that process. The definition of worker is clearly enacted in terms of a person who is employed in and not in terms of person who is employed by. It is immaterial how or by whom he is employed so long as he is actually employed in a manufacturing process.

(c) Piece-rate workers—Whether workers: Piece-rate workers can be workers within the definition of 'worker' in the Act, but they must be regular workers and not workers who come and work according to their sweet will (**Shankar Balaji Waje v. State of Maharashtra, AIR 1967 S.C. 517**). In another case workmen had to work at bidi factory when they liked. The payment was made on piece-rate according to the amount of work done. Within the factory, they were free to work. But the control of the manner in which bides were ready, by the method of rejecting those which did not come up to the proper standards. In such a case it was exercised which was important (**Birdhi Chand Sharma v. First Civil Judge, Nagpur, AIR 1961 SC 644**). Therefore, whatever method may be adopted for the payment of wages, the important thing to see is whether the workers work under supervision and control of the employer. It makes no difference whether the worker employed in the manufacturing process is paid time rate wages or piece rate wages.

(d) The partners of a concern, even though they work on premises in the factory cannot be considered to be workers within Section 2(1): (**1958 (2) LJ 252 SC**).

(e) An independent contractor: He is a person who is charged with work and has to produce a particular result but the manner in which the result is to achieved is left to him and as there is no control or supervision as to the manner in which he has to achieve the work, he is not a worker.

(ii) Employment should be direct or through some agency

The words directly or by or through any agency in the definition indicate that the employment is by the management or by or through some kind of employment agency. In either case there is a contract of employment between the management and the person employed. There should be a privity of contract between them and the management. Only such person can be classified as worker who works either directly or indirectly or through some agency employed for doing his works of any manufacturing process or cleaning, etc., with which the factory is concerned. It does not contemplate the case of a person who comes and that too without his intervention either directly, or indirectly, and does some work on the premises of factory.

(iii) Employment should be in any manufacturing process etc.

The definition of "worker" is fairly wide. It takes within its sweep not only persons employed in manufacturing process but also in cleaning any part of the machinery and premises used for manufacturing process. It goes far beyond the direct connection with the manufacturing process by extending it to other kinds of work which

may either be incidental to or connected with not only the manufacturing process itself but also the subject of the manufacturing process (*Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others*), the concept of manufacturing process has already been discussed. The meaning of the expression employed in cleaning any part of machinery, etc.” and employed in work incidental to process, are discussed below:

(a) Employed in cleaning any part of machinery etc.: If a person is employed in cleaning any part of the machinery premises which is used for manufacturing process, he will be held as worker.

(b) Employed in work incidental to process: This clause is very important because it enlarges the scope of the term, manufacturing process. Following illustrative cases will clarify the meaning of this clause:

(1) In *Shinde v. Bombay Telephones, 1968 (11) LJ 74*, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.

(2) In *Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others*, it was held that the definition of worker does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of ‘worker. Timekeepers employed to maintain attendance of the staff, job cards particularly of the various jobs under operation, and time-sheets of the staff engaged in production of spare parts, repairs, etc.; and head time-keeper who supervise the work of the time-keepers, perform work which is incidental to or connected with the manufacturing process carried on in the factory and would therefore, fall within the definition of the worker in the Act.

(3) Munim in a factory is a worker.

(4) Workmen in canteen attached to a factory are employees.

(5) A person employed by a gas manufacturing works as a coolie for excavating and digging trenches outside the factory for laying pipes for transporting gas to consumers, cannot be held to be a worker (***AIR 1961 Bomb. 184***).

(6) Person employed to supply material to a mason engaged in construction of furnace will be deemed to be employed by the factory to a work incidental to or connected with manufacturing process.

(7) In a soap-works, a carpenter preparing the packing cases is a worker because he might legitimately be considered to be engaged in a kind of work incidental to or connected with the subject of the manufacturing process, viz., packaging of soap for being sent out for sale.

(8) In the case of *Rohtas Industries Ltd. v. Ramlakhan Singh and others, A.I.R. 1971 SC 849*, a person was employed in a paper factory. He was engaged in supervising and checking quality and weight of waste papers and rags which are the basic raw material for the manufacture of paper. He used to deal with receipts and maintain records of stock and pass the bill of the supplier of waste paper and rags. He used to work in the precincts of the factory and in case of necessities had to work inside the factory. The Supreme Court held that he was working in the factory premises or its precincts in connection with the work of the subject of the manufacturing process, namely the raw material.

(iv) Employment may be for remuneration or not

A person who receives wages as remuneration for his services, a person who receives remuneration on piecework basis, a person may be working as an apprentice, and a person who is a honorary worker, all come within the definition of a worker. Therefore, to be a worker, it is immaterial whether a person is employed for wages or for no wages.

(v) Any member of the armed forces of the Union is excluded from the definition of worker

(vi) Whether all employees are workers?

Since the word employee has not been defined in the Act it follows that all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers (**Harbanslal v. State of Karnataka, (1976) 1 Karnt.J.111**). All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act (**Union of India v. G.M. Kokil, 1984 SCC (L&S) 631**).

Once it is established prima facie that premises in question is a factory within the meaning of the Act, the provisions of Section 103 as to the presumption of employment are immediately attracted and onus to prove the contrary shifts to the accused (**Prafulbhai Patadia v. The State, 1976 (12) E.L.R. 329**).

Q. Who is an Occupier? Discuss the general duties of Occupier of a Factory. What notice an occupier is required to give before he occupies the premises as to Factory?

Section 2(n) of the Act defines the term "occupier" as a person who has ultimate control over the affairs of the factory: Provided that

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) in the case of a company, any one of the directors, shall be deemed to be the occupier;
- (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire.

(1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under (a) Sections 6, 7, 7A, 7B, 11 or 12; (b) Section 17 in so far as it relates to the providing the maintenance of sufficient and suitable lighting in or around the dock; (c) Sections 18, 19, 42, 46, 47 or 49 in relation to the workers employed on such repair or maintenance;

(2) The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be occupier for the purposes of any matter provided for by or under Sections 13, 14, 16 or 17 (save as otherwise provided in this proviso) or Chapter IV (except Section 27) or Sections 43, 44, or 45, Chapter VI, VII, VIII or IX or Sections 108, 109 or 110, in relation to (a) the workers employed directly by him, or by or through any agency, and (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

The important test whether a person is an occupier or not is the possession or vesting in of the ultimate control of the factory. The control should be an ultimate one, though it may be remote. There was a lot of controversy regarding 'Occupier in case of a company, as the Section 2(n)(ii), provides that any one of the directors of the company shall be deemed to be occupier of the factory.

However, the Supreme Court in the case of **J.K. Industries Ltd. v. Chief Inspector of Factories (1997) 1-L.L.J. SC 722**, has held that only a member of Board of Directors of the Company can be occupier of the factory of the Company. The ultimate control of factory owned by company vests in Board of Directors. Ultimate control which vests in Board of Directors cannot be vested in any one else. Company owning factory cannot nominate its employees or officers except Director of the company as occupier of its factory.

Therefore, an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not ultra

vires main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii). Further, proviso (ii) to Section 2(n) read with Section 92, does not offend Article 21.

Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is who has ultimate control over its affairs in a government company, in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of government companies) were therefore deemed to be appointed as occupiers under the Act (*IOC v. CIF, LJ II SC 1998 604*).

Exemption of occupier or manager from liability in certain cases: Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that:

- (a) he has used due diligence to enforce the execution of this Act; and
- (b) that the offence in question was committed without his knowledge, consent or connivance, by the said another person.

The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability.

The Section is an exception to principles of strict liability, but benefit of this would be available only when the requirements of this section are fully complied with and the court is fully satisfied about the proof of facts contemplated in (a) and (b) above.

General duties of Occupier of a Factory

Section 7A is inserted by the Factories (Amendment) Act, 1987, as under:

- (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
- (2) Without prejudice to the generality of the provisions of Sub-section (1) the matters to which such duty extends shall include:
 - a. The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
 - b. the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - c. the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
 - d. the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
 - e. the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
- (3) Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

NOTICE BY OCCUPIER

Section 7 imposes an obligation on the occupier of a factory to send a written notice, containing prescribed particulars, to the Chief Inspector at least 15 days before an occupier begins to occupy or use a premises as a

factory and at least 30 days before the date of resumption of work in case of seasonal factories, i.e. factories working for less than 180 days in a year.

Contents of notice: A notice must contain following particulars:

1. The name and situation of the factory.
2. The name and address of the occupier.
3. The name and address of the owner of the premises or building (including the precincts, etc., thereof referred to in Section 93).
4. The address at which communication relating to the factory should be sent.
5. The nature of manufacturing process to be carried on in the factory during next 12 months.
6. The total rated horse power installed or to be installed in the factory which shall not include the rated horse power of any separate standby plant.
7. The name of the Manager of the factory for the purpose of this Act.
8. the number of workers likely to be employed in the factory.
9. Such other particulars as may be prescribed.

Notice where new manager is appointed: Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof, within seven days from the date on which such person takes over charge.

When there is no manager – occupier deemed as manager: During a period for which no person has been designated as Manager of a factory or during which the person designated does not manage the factory any person found acting as manager, will be the manager for the purposes of the Act. Where no such person is found the occupier should be deemed to be the manager of the factory.

Q. What are the general duties of manufacturer as regard articles and substances for use in factories?

Section 7B provides that every person who designs, manufactures, imports or supplies any article (including plant and machinery) or use in any factory, shall observe the following:

- (a) ensure, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
- (b) carry out such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);
- (c) take such steps as may be necessary to ensure that adequate information will be available:
 - i.in connection with the use of the article in any factory;
 - ii.about the use for which it is designed and tested; and
 - iii.about any condition necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers.

The Section further provides that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see:

- (a) that the article (including plant and machinery) conforms to the same standards if such article is manufactured in India, or
- (b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India, that the article conforms to such standards.

For the above purpose, the concerned person may carry out or arrange for the carrying out of necessary research with a view to the discovery and so far as is reasonably practicable, the elimination or minimisation of any risk to the health or safety of workers to which design or article (including plant and machinery) may give rise.

The section further provides that if research, testing, etc. has already been exercised or carried out, then no such research is required again. The above duties relate only to things done in the course of the business carried out by him, and to matters within his control.

However, the person may get relief from the exercise of above duties if he gets an undertaking in writing by the user of such article to take necessary steps that the article will be safe and without risk to the health of the workers.

Q. Discuss the Law relating to appointment, power, duties and functions of Inspector under the Factories Act, 1948.

Appointment: Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications.

Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit [Section 8(2A)].

Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them [Section 8(5)]. The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the Official Gazette.

When in any area, there are more inspectors than one, the State Government may by notification in the Official Gazette, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Section 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

Powers of Inspectors: Section 9 describes the powers of the Inspectors subject to any rules made in this behalf for the purpose of the Act. An Inspector may exercise any of the following powers within the local limits for which he is appointed:

1. He can enter any place which is used or which, he has reasons to believe, is used as a factory.
2. He can make examination of the premises, plant, machinery, article or substance. Inquire into any accident or dangerous occurrence whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry.
3. Require the production of any prescribed register or any other document relating to the factory. Seize, or take copies of any register, record of other document or any portion thereof.
4. Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.
5. In case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is in the circumstances necessary, for carrying out the purposes of this Act) and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination.

6. **Lawful Direction:** It is the duty of the inspector that he should issue the directions to the manager of factory, not to do unlawful actions. He can direct the manager not to employ the children as workers.
7. **Prohibition of Any Person:** Inspector can prohibit the employment of any person and manager of factory will obey his orders.
8. Inspector can also inquire for the medical examination of a suspected minor working in the factory. (Section 75)

Production of documents: The Factories Act requires the maintenance of certain registers and records. Inspectors have been empowered to ask for the production of any such documents maintained under law, and the non-compliance of this has been made an offence.

Q. Discuss the provisions regarding safety of the workers under the Factories Act, 1948?

Chapter IV of the Act contains provisions relating to safety. These are discussed below:

- (i) Fencing of machinery:** Fencing of machinery in use or in motion is obligatory under Section 21. This Section requires that following types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position, while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:
- i. every moving part of a prime-mover and flywheel connected to a prime-mover. It is immaterial whether the prime-mover or fly-wheel is in the engine house or not;
 - ii. head-race and tail-race of water wheel and water turbine;
 - iii. any part of stock-bar which projects beyond the head stock of a lathe;
 - iv. every part of an electric generator, a motor or rotary converter or transmission machinery unless they are in the safe position;
 - v. every dangerous part of any other machinery unless they are in safe position.

(ii) Safety measures in case of work on or near machinery in motion: Section 22 lays down the procedure for carrying out examination of any part while it is in motion or as a result of such examination to carry out the operations mentioned under clause (i) or (ii) of the proviso to Section 21(1). Such examination or operation shall be carried out only by specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of appointment and while he is so engaged. No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover or any transmission machinery while the prime-mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication and adjustment thereof would expose the woman or the young person to risk of injury from any moving part either of that machine or of any adjacent machinery [Section 22(2)].

(iii) Employment of young persons on dangerous machines: Section 23 provides that no young person shall be required or allowed to work at any machine to which this section applies unless he has been fully instructed as to dangers arising in connection with the machine and the precautions to be observed and (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(iv) Striking gear and devices for cutting off power: Section 24 provides that in every factory suitable striking gears or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley. Further, driving belts when not in use shall not be allowed to rest or ride upon shafting in motion. Suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room in every factory. It is also provided that when a device which can inadvertently shift from 'off' to 'on position in a factory', cutoff power arrangements shall be provided for locking the devices on safe position to prevent accidental start of the transmission machinery or other machines to which the device is fitted.

(v) Self-acting machines: Section 25 provides further safeguard for workers from being injured by self-acting machines. It provides that no traverse part of self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty five centimeters from any fixed structure which is not part of the machines. However, Chief Inspector may permit the continued use of a machine installed before the commencement of this Act, which does not comply with the requirement of this section, on such conditions for ensuring safety, as he may think fit to impose.

(vi) Casing of new machinery: Section 26 provides further safeguards for casing of new machinery of dangerous nature. In all machinery driven by power and installed in any factory (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger; (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion, shall be completely encased unless it is so situated as to be so safe as it would be if it were completely encased. The section places statutory obligation on all persons who sell or let on hire or as agent of seller or hire to comply with the section and in default shall be liable to punishment with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 500 or with both.

(vii) Prohibition of employment of woman and children near cotton openers: According to Section 27, no child or woman shall be employed in any part of factory for pressing cotton in which a cotton opener is at work. However, if the feed-end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of partition where the feed-end is situated.

(viii) Hoists and lifts: Section 28 provides that in every factory: (i) every hoist and lift shall be of good mechanical construction, sound material and adequate strength. It shall be properly maintained and thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination, (ii) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part, (iii) the maximum safe working load shall be marked on every hoist or lift and no load greater than such load shall be marked on every hoist or lift and no load greater than such load shall be carried thereon, (iv) the cage of every hoist and lift shall be fitted with a gate on each side from which access is afforded to a landing (v) such gates of the hoist and lift shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(ix) Lifting machines, chains, ropes and lifting tackles: In terms of Section 29, in any factory the following provisions shall be complied with respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

(a) all parts including the working gear, whether fixed or movable, shall be (i) of good construction, sound material and adequate strength and free from defects; (ii) properly maintained; (iii) thoroughly examined by a competent person at least once in every period of 12 months or at such intervals as Chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine or no chain, rope or lifting tackle, shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register and where it is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on that premises;

(c) while any person is employed or working on or near the wheel track of a travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within 6 meters of that place.

(x) Safety measures in case of use of revolving machinery: Section 30 of the Act prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken.

(xi) Pressure plant: Section 31 provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The State Government may make rules to regulate such pressures or working and may also exempt any part of any plant or machinery from the compliance of this section.

(xii) Floor, stairs and means of access: Section 32 provides that in every factory (a) all floors, steps, stairs passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstruction and substances likely to cause persons to slip and where it is necessary to ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails, (b) there shall, be so far as is reasonably practicable, be provided, and maintained safe means of access of every place at which any person is at any time required to work; (c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably, practicable, by fencing or otherwise, to ensure the safety of the person so working.

(xiii) Pits, sumps, openings in floors etc.: Section 33 requires that in every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction, or contents is or may be source of danger shall be either securely covered or securely fenced. The State Government may exempt any factory from the compliance of the provisions of this Section subject to such conditions as it may prescribe.

(xiv) Excessive weights: Section 34 provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause him injury. The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

(xv) Protection of eyes: Section 35 requires the State Government to make rules and require for providing the effective screens or suitable goggles for the protection of persons employed on or in immediate vicinity of any such manufacturing process carried on in any factory which involves (i) risk of injury to the eyes from particles or fragments thrown off in the course of the process or; (ii) risk to the eyes by reason of exposure to excessive light.

(xvi) Precautions against dangerous fumes, gases etc.: Section 36 provides (1) that no person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in sub-section (1), until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour and unless:

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or

(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person outside the confined space.

(xvii) Precautions regarding the use of portable electric light: Section 36A of the Act provides that in any factory (1) no portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided; and (2) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

(xviii) Explosive or inflammable dust gas, etc.: Sub-section (1) of section 37 of the Act provides that in every factory where any manufacturing process produces dust, gas, fume or vapour of such character and to such extent to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by (a) effective enclosure of the plant or machinery used in the process (b) removal or prevention of the accumulation of such dust, gas fume or vapour, and (c) exclusion or effective enclosure of all possible sources of ignition.

(xix) Precautions in case of fire: Section 38 provides that in every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to provide and maintain (a) safe means of escape for all persons in the event of fire, and (b) the necessary equipment and facilities for extinguishing fire. Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the outline to be followed in such case.

(xx) Power to require specification of defective parts or test to stability: Section 39 states that when the inspector feels that the conditions in the factory are dangerous to human life or safety he may serve on the occupier or manager or both notice in writing requiring him before the specified date to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, machinery or plant can be used with safety or to carry out such test in such a manner as may be specified in the order and to inform the inspector of the results thereof.

(xxi) Safety of buildings or machinery: Section 40 provides that the inspectors in case of dangerous conditions of building or any part of ways, machinery or plant requires the manager or occupier or both to take such measures which in his opinion should be adopted and require them to be carried out before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways of machinery he may order prohibiting the use of the same unless it is repaired or altered.

(xxii) Maintenance of buildings: Section 40-A provides that if it appears to the inspector that any building or part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date.

(xxiii) Safety officers: Section 40-B provides that in every factory (i) where 1,000 or more workers are ordinarily employed or (ii) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State Government.

(xxiv) Power to make rules to supplement this Chapter: This is vested in the State Government under Section 41 for such devices and measures to secure the safety of the workers employed in the factory.

Q. Enumerate the various measures contemplated by the Factories Act-1948 regarding protection of the health of workers.

Chapter III of the Act deals with the following aspects.

(i) Cleanliness: Section 11 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in this respect:

- i. All the accumulated dirt and refuse on floors, staircases and passages in the factory shall be removed daily by sweeping or by any other effective method. Suitable arrangements should also be made for the disposal of such dirt or refuse.
- ii. Once in every week, the floor should be thoroughly cleaned by washing with disinfectant or by some other effective method [Section 11(1)(b)].
- iii. Effective method of drainage shall be made and maintained for removing water, to the extent possible, which may collect on the floor due to some manufacturing process.
- iv. To ensure that interior walls and roofs, etc. are kept clean, it is laid down that:
 - a. white wash or colour wash should be carried at least once in every period of 14 months;
 - b. where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months;
 - c. where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
 - v. All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.
- vi. The dates on which such processes are carried out shall be entered in the prescribed register. If the State Government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean. [Section 11(2)]

(ii) Disposal of waste and effluents: Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the State Government. If the State Government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority if required by the State Government. (Section 12)

(iii) Ventilation and temperature: Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining (1) adequate ventilation by the circulation of fresh air; and (2) such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health. What is reasonable temperature depending upon the circumstances of each case. The State Government has been empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof. It may direct that proper measuring instruments at such places and in such position as may be specified shall be provided and prescribed records shall be maintained.

Measures to reduce excessively high temperature: To prevent excessive heating of any workroom following measures shall be adopted:

- i. Walls and roofs shall be of such materials and so designed that reasonable temperature does not exceed but kept as low as possible.
- ii. (ii) Where the nature of work carried on in the factory generates excessively high temperature, following measures should be adopted to protect the workers:
 - a. by separating such process from the workroom; or
 - b. insulating the hot parts; or
 - c. adopting any other effective method which will protect the workers.

The Chief Inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. In this regard, he can specify the measures which in his opinion should be adopted. (Section 13)

(iv) Dust and fume: There are certain manufacturing processes like chemical, textile or jute, etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process. Following measures should be adopted in this respect:

- a. Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.
- b. Wherever necessary, an exhaust appliance should be fitted, as far as possible, to the point of origin of dust fumes or other impurities. Such point shall also be enclosed as far as possible.
- c. In stationery internal combustion engine and exhaust should be connected into the open air.
- d. In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes there from. (Section 14)

It may be pointed that the evidence of actual injury to health is not necessary. If the dust or fume by reason of manufacturing process is given off in such quantity that it is injurious or offensive to the health of the workers employed therein, the offence is committed under this Section. Lastly the offence committed is a continuing offence. If it is an offence on a particular date it does not cease to be an offence on the next day and so on until the deficiency is rectified.

(v) Artificial humidification: Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc., higher degree of humidity is required for carrying out the manufacturing process. For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers.

Section 15(1) empowers the State Government to make rules (i) prescribing the standards of humidification, (ii) regulating methods to be adopted for artificially increasing the humidity of the air, (iii) directing prescribed tests for determining the humidity of the air to be correctly carried out, and recorded, and (iv) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work-room.

Section 15(2) lays down that water used for artificial humidification should be either purified before use or obtained from a public supply or other source of drinking water.

Where the water is not purified as stated above. Section 15(3) empowers the Inspector to order, in writing, the manager of the factory to carry out specified measures, before a specified date, for purification of the water.

(vi) Overcrowding: Overcrowding in the work-room not only affect the workers in their efficient discharge of duties but their health also. Section 16 has been enacted with a view to provide sufficient air space to the workers.

- i. Section 16(1) prohibits the overcrowding in the work-rooms to the extent it is injurious to the health of the workers.
- ii. Apart from this general prohibition Section 16(2) lays down minimum working space for each worker as 14.2 cubic metres of space per worker in every workroom.

For calculating the work area, the space more than 4.2 metres above the level of the floor, will not be taken into consideration.

Posting of notice: Section 16(3) empowers the Chief Inspector who may direct in writing the display of a notice in the work-room, specifying the maximum number of workers which can be employed in that room. According to Section 108, notice should be in English and in a language understood by the majority of the workers. It should be displayed at some conspicuous and convenient place at or near, the entrance. It should be maintained in clean and legible conditions.

Exemptions: The chief Inspector may by order in writing, exempt any work-room from the provisions of this section, subject to such conditions as he may think fit to impose, if he is satisfied that non-compliance of such provision will have no adverse effect on the health of the workers employed in such work-room.

(vii) Lighting: Section 17 of the Factories Act makes following provisions in this respect:

- i. every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both, in every part of the factory where workers are working or passing;
- ii. all the glazed windows and sky lights should be kept clean on both sides;
- iii. effective provisions should be made for the prevention of glare from a source of light or by reflection from a smooth or polished surface;
- iv. formation of shadows to such an extent causing eye-strain or the risk of accident to any worker, should be prevented; and
- v. the state government is empowered to lay down standard of sufficient and suitable lighting for factories for any class or description of factories or for any manufacturing process.

(viii) Drinking water: Section 18 makes following provisions with regard to drinking water.

- I. every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory;
- II. water should be wholesome, i.e., free from impurities;
- III. water should be supplied at suitable points convenient for all workers;
- IV. no such points should be situated within six metres of any washing place, urinals, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination, unless otherwise approved in writing by the Chief Inspector;
- V. all such points should be legible marked Drinking Water in a language understood by majority of the workers;
- VI. in case where more than 250 workers are ordinarily employed, effective arrangements should be made for cooling drinking water during hot weather. In such cases, arrangements should also be made for the distribution of water to the workers; and
- VII. the State Government is empowered to make rules for the compliance of above stated provisions and for the examination, by prescribed authorities, of the supply and distribution of drinking water in factories.

(ix) Latrines and urinals: Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers. These points as stated below, are subject to the provisions of Section 19 and the rules laid down by the State Government in this behalf.

- I. every factory shall make provision for sufficient number of latrines and urinals of prescribed standard. These should be conveniently situated and accessible to all workers during working hours;
- II. separate arrangement shall be made for male and female workers;
- III. all these places shall have suitable provisions for lighting and ventilation;
- IV. no latrine or urinal shall communicate with any work-room unless in between them there is provision of open space or ventilated passage;
- V. all latrines and urinals shall be kept in a clean and sanitary conditions at all times;
- VI. a sweeper shall be employed whose exclusive job will be to keep clean all latrines and urinals;
- VII. where more than 250 workers are ordinarily employed in a factory, following additional measures shall be taken under Section 19(2):
 - i. all latrines and urinals accommodation shall be of prescribed sanitary type.
 - ii. all internal walls up to ninety centimeters, and the floors and the sanitary blocks shall be laid in glazed tiles or otherwise furnished to provide a smooth polished impervious surface;
 - iii. the floors, walls, sanitary pan, etc., of latrines and urinals shall be washed and cleaned with suitable detergents and/or disinfectants, at least once in every seven days.
- VIII. the State Government is empowered to make rules in respect of following:
 - i. prescribing the number of latrines and urinals to be provided to proportion to the number of male and female workers ordinarily employed in the factory.
 - ii. any additional matters in respect of sanitation in factories;
 - iii. responsibility of the workers in these matters.

(x) Spittoons: Every factory should have sufficient number of spittoons situated at convenient places. These should be maintained in a clean and hygienic condition. (Section 20)

Q. Describe the provisions for the welfare of workers under the Factories Act, 1948.

(i) Washing facilities: Section 42 provides that every factory should provide and maintain adequate and suitable washing facilities for its workers. For the use of male and female, such facilities should be separate and adequately screened. Such facilities should be conveniently accessible for all workers and be kept in a state of cleanliness. The State Government is empowered to make rules prescribing standards of adequate and suitable washing facilities.

(ii) Facilities for storing and drying clothing: Section 43 empowers the State Government in respect of any factory or class or description of factories to make rules requiring the provision, therein of (i) suitable places for keeping clothing not worn during working hours, and (ii) for drying of wet clothing.

(iii) Facilities for sitting: There are certain operations which can be performed by the workers only in a standing position. This not only affects the health of a worker but his efficiency also.

According to Section 44(1), every factory shall provide and maintain suitable facilities for sitting, for those who work in standing position so that they may make use of them as an when any opportunity comes in the course of their work. If, in the opinion of the Chief Inspector, any work can be efficiently performed in a sitting position, he may direct, in writing, the occupier of the factory, to provide before a specified date such seating arrangements as may be practicable, for all workers so engaged. The State Government, may by a notification in the Official Gazette, declare that above provisions shall not apply to any specified factory or any manufacturing process.

(iv) First aid appliances: As per Section 45, the following arrangements should be made in every factory in respect of first-aid facilities.

1. Provision of at least one first-aid box or cup-board, subject to following conditions, for every 150 workers ordinarily employed at any one time in the factory.
2. It should be equipped with prescribed contents and nothing else should be stored in it.
3. It should be properly maintained and readily accessible during all working hours.
4. A responsible person who holds a certificate in first-aid treatment, recognised by the State Government should be made the in-charge of such first-aid box or cup-board. Such a person should be readily available during working hours of the factory. Where there are different shifts in the factory, a separate person may be appointed for each shift provided he is a responsible person and trained in first-aid treatment.
5. Where more than 500 workers are ordinarily employed in a factory, an ambulance room should be provided and maintained by every such factory. Such room should be of prescribed size containing prescribed equipment and is in charge of such medical and nursing staff as may be prescribed.

(v) Canteens

(1) The State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of workers.

(2) Such rules may relate to any of the following matter:

- i. the date by which canteen shall be provided;
- ii. the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- iii. the foodstuffs to be served and the prices to be charged;
- iv. the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
- v. the constitution of a Managing Committee for the canteen and the representation of the workers in the management of the canteen; and
- vi. the delegation, to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (iii). (Section 46)

Employees working in canteens in industrial establishments run by Managing Committee are not employees of the Managing Committee, but are employees of occupier (*Kanpur Suraksha Karmachari Union v. Union of India, AIR 1988 SC*).

Where the statute casts an obligation to own a canteen in the factory, and the establishment runs a canteen through a contractor who brings the workers for the canteen would be part and parcel of the establishment and the canteen workers would be deemed to be regular employees of the establishment entitled to arrears of salary and other monetary benefits (*Tamil Manila Thozilalar Sangam v. Chairman TNEB, 1994 CLA 34 Mad. 63.*)

(vi) Shelters, rest rooms and lunch rooms: The provision of some sort of shelter is a must, where the workers can take their meals brought by them during rest interval. The following provisions under Section 47 of the Act have been made in this respect:

(1) In every factory where more than 150 workers are ordinarily employed, the occupier should make adequate and suitable arrangements for shelters or rest rooms and lunch-room with provision of drinking water where the workers can take rest of or eat meals brought by them. However, any canteen which is maintained in accordance with provisions of Section 45 shall be regarded as part of the requirements of this sub-section. Where a lunch room exists no worker shall eat any food in the workroom.

(2) Such places should be equipped with the facility of drinking water.

(3) Such places should be sufficiently lighted, ventilated and kept in cool and clean conditions.

(4) The construction and accommodation, furniture and equipment of such place should conform to the standards, if any, laid down by the State Government.

By a notification in the Official Gazette, the State Government may exempt any factory from the compliance of these provisions. Further, where any canteen is maintained under Section 45, then provision of such shelter room, etc., is not necessary.

(vii) Crèches: Following provisions have been made in respect of creches in the factories:

(1) In every factory wherein more than 30 women workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of six years of such women.

(2) There should be adequate accommodation in such rooms.

(3) These places should be sufficiently lighted and ventilated and kept in clean and sanitary conditions.

(4) Women trained in the case of children and infants should be made in charge of such rooms.

The State Government is empowered to make rules in respect of following matters:

(1) Location and standards in respect of construction, accommodation, furniture and other equipment of such places.

(2) Provisions of facilities for washing and changing clothing of children or any other additional facility for their care.

(3) Provisions of free-milk or refreshment or both for children.

(4) Facilities for the mothers of such children to feed them at suitable intervals in the factory. (Section 48)

(viii) Welfare officers: According to Section 49(1), in every factory wherein 500 or more workers are ordinarily employed, the occupier should employ such number of welfare officers as may be prescribed. The State Government is empowered to prescribe the duties, qualifications and conditions of service of such welfare officers. The provisions of Section 49 also apply to seasonal factories like sugar factories etc.

The State Government is empowered to lay down rules as to the conditions of service of welfare officers. The conditions of service may include matters in respect of pay grades, period of probation and confirmation, dismissal or termination or retirement etc. In the case of *Associated Cement Cos. Ltd. v. Sharma, A.I.R. 1965 S.C. 1595*, the Supreme Court held that Rule 6 of Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, requiring the concurrence of the Labour Commissioner before the management can dismiss or terminate the services of Welfare Officer is not ultra vires.

(ix) Powers to make rules to supplement this chapter: The State Government is empowered to make rules exempting factory or class or description of factories from the compliance of provisions of this chapter, provided alternative arrangements for workers welfare have been made to the satisfaction of the authorities. Such rules may require that workers representatives shall be associated with the management of the welfare arrangements of the workers. (Section 50)

Q. Who is a certifying surgeon?

Section 10 provides for the appointment of the Certifying Surgeons by the State Government for the purpose of this Act to perform such duties as given below within such local limits or for such factory or class or description of factories as may be assigned to Certifying Surgeon:

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories.

Q. What are the provisions regarding employment of young persons in Factories in relation to Factories Act?

EMPLOYMENT OF YOUNG PERSONS AND CHILDREN

Most of the civilised nations restrict the employment of children in the factories. The Royal Commission on Labour observed that this is based on the principle that the supreme right of the State to the guardianship of children controls the natural rights of the parent when the welfare of society or of the children themselves conflicts with parental rights. Workers as young as five years of age may be found in some of these places working without adequate meal, intervals or weekly rest days at as low as 2 annas in the case of those tender years. Therefore, to curb these and other evil practices of employing children, following legislative measures have been adopted.

(i) General prohibition as to employment of children: According to Section 67, a child who has not completed his fourteenth year of age, shall not be employed in any factory.

(ii) Employment of children and Adolescents—Conditions: According to Section 68, children completing their fourteenth year or an adolescent, shall not be required to work in any factory, unless following conditions are fulfilled:

- (i) the manager of the factory has obtained a certificate of fitness granted to such young person under Section 69;
- (ii) while at work, such child or adolescent carries a token giving reference to such certificate.

(iii) What is a certificate of fitness: Under **Section 69** of the Act, before a young person is employed in the factory, a Certifying Surgeon has to certify that such person is fit for that work in the factory. To get this certificate, an application to a Certifying Surgeon has to made either:

- (i) by the young person himself; or
- (ii) by his parent or guardian; or
- (iii) by the manager of the factory.

If the application is made by a person other than the manager, it must be accompanied by a document, signed by the manager, that such young person will be employed in the factory if a certificate of fitness is granted in his favour. **[Section 69(1)]**

Certificate of fitness to work as a child: The Certifying Surgeon may grant or renew to any such young person, a certificate of fitness, in the prescribed form to work as a child, if, after examination, he is satisfied that

- (i) such young person has completed his 14th year;
- (ii) has attained the prescribed physical standards; and
- (iii) is fit for such work. [Section 69(2)(a)]

Certificate of fitness to work as an adult: If the Certifying Surgeon, after examination is satisfied that such a young person has completed his 15th year and is fit for a full day work in the factory, he may grant or renew a certificate of fitness, in the prescribed form, to such young person, to work as an adult. [Section 69(2)(b)]
Proviso to Section 69(2) provides that before granting or renewing a certificate of fitness, the Certifying Surgeon must have personal knowledge of the place of the work and manufacturing process wherein such young person will be employed. If he has no personal knowledge, he must examine such place personally.

Other features of certificate of fitness

Validity: The certificate is valid for a period of 12 months from the date of issue [Section 69(3)(a)].

Conditions of Issue: It may be issued subject to conditions in respect to:

- (i) the nature of work in which a young person may be employed, or
- (ii) the re-examination of such young person before the expiry of 12 months. [Section 69(3)(b)]. Such young person shall not be required or allowed to work except in accordance with these conditions. [Section 69(6)]

Revocation of the certificate: The certificate can be revoked by the certifying surgeon, at any time if, in his opinion, the worker is no longer fit to work as such in the factory. [Section 69(4)]

Certifying Surgeon to state reasons for refusal or revocation: Where a Certifying Surgeon refuses to grant or renew a certificate or revokes a certificate he shall state his reasons in writing if requested by any person, for doing so. [Section 69(5)]

Fee for the certificate: Any fee payable for a certificate shall be paid by the occupier and it cannot be recovered from the young person, his parents, or guardian. [Section 69(7)]

(iv) Effect of certificate of fitness granted to adolescents

(1) The effect of granting a certificate of fitness to an adolescent and who while at work in a factory carries a token giving reference to such certificate is that he is deemed to be an adult for the purpose of Chapter VI relating to working hours, and Chapter VIII relating to annual leave with wages. [Section 70(1)]

(2) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m.

Provided that the State Government may by notification in the Official Gazette, in respect of any factory or group or class or description of factories:

- i. vary the limits laid down in this sub-section, so, however, that no such section shall authorise the employment of any female adolescent between 10 p.m. and 5 a.m.
- ii. grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved.

(3) Where an adolescent has not been granted this certificate, he shall notwithstanding his age, be deemed to be a child for all the purposes of this Act. [Section 70(2)]

(v) Penalty for using false certificate of fitness

If a certificate of fitness is granted to any person, no other person can use it or attempt to use it. The person granting the certificate, cannot allow its use or attempt to be used by another person. In other words, where a person knowingly uses or attempts to use a false certificate and thus, contravenes above provisions, can be punished with imprisonment extending up to two months or with fine upto Rs. 1000 or with both. (Section 98)

Working hours for children: Section 71, lays down further restrictions on the employment of children in the factories. These restrictions as stated below relate to working hours for children.

1. A child shall not be employed or permitted to work for more than 4-1/2 hours in any day. **[Section 71(1)(a)]**
2. He is not permitted to work during night, i.e., during a period of at least 12 consecutive hours, including intervals, between 10 p.m. and 6 a.m.
3. The period of work shall be limited to two shifts only. **[Section 71(2)]**
4. These shifts shall not overlap.
5. Shifts should not spread over more than 5 hours each.
6. Each child shall be employed in only one of the relays.
7. The relays should not be changed more frequently than once in a period of 30 days, otherwise previous permission of the Chief Inspector should be sought in writing.
8. The provision relating to weekly holiday under Section 52, also apply to child workers. But **Section 71(3)** does not permit any exemption in respect of these provisions.
9. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory. **[Section 71(4)]**
10. No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

The Act not only prohibits the double employment of a child by the occupier or manager, but also prohibits under Section 99 his parent or guardian or person having custody of or control over him or obtaining any direct benefit from his wages, from allowing him to go for double employment. If they contravene this provision, they can be punished with a fine extending up to one thousand rupees unless the child works without the consent or connivance of his parent or guardian or such other person.

Notice of periods of work for children

- I. A notice, showing clearly for every day the period during which children may be required or allowed to work, shall be displayed and correctly maintained as per Section 108(2) in every factory which employs children.
- II. The periods of work shall be fixed beforehand according to the method prescribed for adult workers under Section 61.
- III. The periods of work so fixed shall not contravene the provisions of Section 71 relating to working hours for children. **[Section 72(2)]**
- IV. The provisions of sub-sections (8), (9) and (10) of Section 61 shall apply to such a notice. (Section 72) Register of child workers

According to Section 73(1), in every factory, in which children are employed, a register of child workers should be maintained and should be available for inspection by the inspector at all times during working hours or when any work is being carried on in the factory.

Hours of work to correspond with notice under Section 72 and register under Section 73 According to Section 74, the employment of any child shall be in accordance with the notice of periods of work for children to be displayed under Section 72 and the entries made beforehand against his name in the register of child workers of the factory maintained under Section 73.

Power to require medical examination: Section 75 empowers the inspector to serve on the manager of a factory, a notice requiring medical examination of a person by a surgeon, if in his opinion, such person is a young person and is working without a certificate of fitness or, such person, though in possession of certificate of fitness, is no longer fit to work in the capacity stated therein.

The inspector may further direct that such person shall not be employed or permitted to work in any factory until he has been examined and also granted a certificate of fitness or fresh certificate of fitness or has been certified by the Certifying Surgeon not to be a young person.

Certain other provisions of law not barred: The provisions relating to the employment of young persons in factories shall be in addition to, and not in derogation of the provisions of the Employment of Children Act, 1938. (Section 77)

Q. Which type of safety measures will be taken in favour of workers during the working hours under the Factories Act, 1948?

Chapter VI contains provision for regulating working hours for the adult workers and the same are explained below:

(i) Weekly hours: An adult worker shall be allowed to work only for forty-eight hours in any week. (Section 51)

(ii) Weekly holidays: Section 52 provides that there shall be holiday for the whole day in every week and such weekly holiday shall be on the first day of the week. However, such holiday may be substituted for any one of the three days immediately before or after the first day of the week provided the manager of the factory has:

- i. delivered a notice at the office of the Inspector; and
- ii. displayed a notice in the factory to this effect.

The effect of all this is that subject to above said conditions (i) and (ii) there shall be a holiday during ten days. In other words, no adult worker shall work for more than ten days consecutively without a holiday for the whole day. It is not possible for an employer to change the weekly off solely on the ground that there was no material available for work to be provided on a particular date, avoiding requirements to be fulfilled under Section 25(m) of Industrial Disputes Act regarding lay off (**LAB IC 1998 Bom. 1790**). Such notices of substitution may be cancelled by an appropriate notice but not later than the day of weekly holiday or the substituted holiday whichever is earlier.

(iii) Compensatory holidays: When a worker is deprived of any of the weekly holiday as result of passing of an order or making of a rule exempting a factory or worker from the provisions of Section 52, he is entitled to compensatory holidays of equal number of the holidays so lost. These holidays should be allowed either in the same month in which the holidays became due or within next two months immediately following that month. (Section 53)

(iv) Daily hours: According to Section 54, an adult worker, whether male or female shall not be required or allowed to work in a factory for more than 9 hours in any day. Section 54 should be read with Section 59. In other words, the daily hours of work should be so adjusted that the total weekly hours do not exceed 48. The liability of the employer under this Section cannot be absolved on the ground that the workers are willing to work for longer hours without any extra payment.

The daily maximum hours of work specified in Section 54 can be exceeded provided

- i. it is to facilitate the change of shift; and
- ii. the previous approval of the Chief Inspector has been obtained.

(v) Intervals for rest: No adult worker shall work continuously for more than 5 hours unless a rest interval of at least half an hour is given to him. [Section 55(1)]

The State Government or subject to the control of the State Government the Chief Inspector may, by written order for the reasons specified therein, exempt any factory, from the compliance of above provisions to the extent that the total number of hours worked without rest interval does not exceed six. [Section 55(2)]

(vi) Spread over: Section 56 provides that the daily working hours should be adjusted in such a manner, that inclusive of rest interval under Section 55, they are not spread over more than 10-1/2 hours on any day. Thus, we see this Section restricts the practice of forcing the stay of workers in the factory for unduly long periods without contravening the provision of Section 54 relating to daily hours of work.

Proviso to Section 56 provides that the limit may be extended up to 12 hours by the Chief Inspector for reasons to be specified in writing.

(vii) Night shifts: Where a worker in a factory works in night shifts, i.e., shift extending beyond mid-night:
i. the weekly or compensatory holiday shall be a period of 24 consecutive hours beginning when his shift ends;
ii. the following day shall be deemed to the period of 24 hours beginning when shift ends, and the hours he has worked after mid-night shall be counted in the previous day. (Section 57)

(viii) Prohibition of overlapping shifts

According to Section 58(1), where the work in any factory is carried on by means of multiple shifts, the period of shifts should be arranged in such a manner that not more than one relay of workers is engaged in work of the same kind at the same time.

In case of any factory or class or description of factories or any department or section of a factory or any category or description of workers, the State Government or subject to the control of the State Government, the Chief Inspector may, by written order and for specified reasons, grant exemption from the compliance of the provisions of Section 58(1) on such condition as may be deemed expedient. [Section 58(2)]

(ix) Extra wages for overtime: The following provisions have been made in respect of overtime wages:

Where a worker works in a factory for more than 9 hours in any day or more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. [Section 59(1)]

Meaning of ordinary rate of wages: According to Section 59(2) ordinary rate of wages means (i) basic wages; plus, (ii) allowances which include the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles as the worker is for the time being entitled to, but it does not include a bonus and wages for overtime work, House rent allowance, though payable to employers who were not provided with accommodation, cannot be taken into account to calculate overtime wages of employees provided with such accommodation (**Govind Bapu Salve v. Vishwanath Janardhan Joshi, 1995 SCC (L&S) 308**). An employer requiring the workman to work for more than the maximum number of hours overtime work postulated by Section 64(4)(iv) cannot merely on this ground, deny him overtime wages for such excessive hours (**HMT v. Labour Court, 1994 I LLN 156**).

Rate of wages for piece rate workers: Where the workers in a factory are paid on piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the over-time work was done and such time rates shall be deemed to be the ordinary rates of wages of those workers. However, in case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done. [Section 59(3)]

(x) Restriction on double employment: According to Section 60, no adult worker shall be required or allowed to work in any factory on any day if he has already been working in any other factory on that day. However, in certain exceptional circumstances as may be prescribed, the double employment may be permitted.

(xi) Notice of period of work for adults: As per Section 61(1), a notice of period of work, showing clearly for everyday the periods during which adult workers may be required to work, shall be displayed and correctly maintained in every factory. The display of notice should be in accordance with the provisions of Section 108(2).

(2) The periods shown in the notice shall not contravene the provisions of the Factories Act regarding:

- a. Weekly hours, Section 51.
- b. Weekly holidays, Section 52.
- c. Compensatory holidays, Section 53.
- d. Daily Hours, Section 54.
- e. Intervals of rest, Section 55.

f. Spread over of working hours, Section 56 and

g. Prohibition of overlapping shifts, Section 58.

(3) The periods of work shall be fixed beforehand in any of the following ways:

- i. where all the adult workers work during the same periods, the manager of the factory shall fix those periods for such workers generally; [Section 61(3)]
- ii. where all the adult workers are not working during the same period, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group; [Section 61(4)]
- iii. the manager shall fix periods of work for each such group provided they are not working on shift basis; [Section 61(5)]
- iv. where any group is working on a system of shifts, periods shall be fixed, by the manager, during which each relay of the group may work provided such relays are not subject to predetermined periodical changes of shift; [Section 61(6)]
- v. where the relays are subject to predetermined periodical changes of shifts, the manager shall draw up a scheme of shifts, whereunder the periods during which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day. [Section 61(7)]

(4) The form of such notice and the manner in which it shall be maintained, may be prescribed by the State Government. [Section 61(8)]

(5) Any proposed change in the system of work in the factory, which necessitates a change in the notice, shall be notified to the Inspector in duplicate before the change is made. No such change shall be made except with the previous sanction of the Inspector and that too until one week has elapsed since the last change, [Section 61(10)]. This provision intends to prevent sudden variations or casual alterations in the periods of work.

(xii) Register of adult workers: The manager of every factory shall maintain a register of adult workers to be available to the Inspector at all times during working hours containing the following particulars:

- (i) the name of worker;
- (ii) the nature of his work;
- (iii) the group, if any, in which he is included;
- (iv) where his group works on shifts, the relay to which he is allotted; and
- (v) other particulars as may be prescribed.

Where any factory is maintaining a muster roll or a register which contains the abovementioned Particulars, the Inspector may, by order in writing, direct that such muster roll or register shall be maintained in place of and be treated as the register of adult workers in that factory (Section 62). Further, an adult worker shall not be required or allowed to work in the factory unless his particulars have been entered in this register. [Section 62(IA)]

Inspection of the register: Section 62(1) empowers the Inspector to demand the production of register of adult workers at all times during working hours or when any work is being carried on in the factory. It is the duty of the manager to produce the register when demanded at the time of inspection. If the manager does not happen to be on the premises at the time of inspection, he should make arrangement that the register is made available to the inspector. The evident intention of the legislature is that the register should be at the place where the work is going on. Thus, where a manager is absent at the time of inspection of the factory by the inspector and the assistant manager, who is present at that time fails to produce register on demand, the manager has committed breach of Section 62.

Effect of entry in the register: If the name of any person is entered in the register of adult workers, it is a conclusive evidence that the person is employed in the factory. In other words, there is a presumption that the person whose name appears in the attendance register, is employed in the factory.

Liability to maintain register: The liability to maintain register of adult workers has been imposed on the manager of the factory. The occupier cannot be held liable for failure of the manager to maintain the register.

But if somebody else has been made responsible for maintaining such register, manager can plead under Section 101 that the offence was committed by another person including the occupier.

(xiii) Hours of work to correspond with notice under Section 61 and register under Section 62: No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of period of work for adults displayed in the factory and the entries made before had against his name in the register of adult workers of the factory. (Section 63)

Presence of worker during rest period: Where a worker is merely present during the rest period as notified or is found working during that period, there is no contravention of Section 63 and hence not punishable.

(xiv) Power to make exempting rules: The State Government is empowered under Section 64, to make rules defining certain persons holding supervisory or managerial or confidential positions and granting exemptions to them from the provisions of this chapter except Section 66(1)(b) and proviso to Section 66(1) provided that such person shall be entitled for extra wages in respect of overtime under Section 59 if his ordinary rate of wages is not more than Rs. 750 per month.

Q. Define the term 'Employer' and 'wages' under the Minimum Wages Act, 1948.

Employer [Section 2(e)]

"Employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26 –

- i. in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;
- ii. in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person of authority is so appointed, the Head of the Department;
- iii. in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;
- iv. in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner of the supervision and control of the employees or for the payment of wages.

The definitions of "employees" and "employer" are quite wide. Person who engages workers through another like a contractor would also be an employer (**1998 LJ I Bom. 629**). It was held in **Nathu Ram Shukla v. State of Madhya Pradesh A.I.R. 1960 M.P. 174** that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly, in case of **Loknath Nathu Lal v. State of Madhya Pradesh A.I.R. 1960 M.P. 181** an out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act.

Wages [Section 2(h)]

"Wages" means all remunerations capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include:

- i. the value of:
 - a. any house accommodation, supply of light, water medical;

- b. any other amenity or any service excluded by general or social order of the appropriate Government;
- ii. contribution by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- iii. any traveling allowance or the value of any traveling concession;
- iv. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment;
- v. any gratuity payable on discharge.

Q. Explain 'Minimum Wage', 'Fair Wage' and 'Living Wage'.

Wages have been classified into three categories: (1) Living wages (2) Minimum wages (3) Fair wages

(1) Living Wages- Living wages has been defined differently by different people in different countries. The best definition is given by Justice Higgins which reads "Living wage is a wage sufficient to ensure the workman food, shelter, clothing, frugal comfort, provision for evil days etc. as regard for the skill of an artisan, if he is one". According to Fair Wages Committee Report: "The living wage should enable the male earner to provide himself and his family not merely the basic essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirement of essential social needs and measures of insurance against old age." Thus, living wages means the provision for the bare necessities plus certain amenities considered necessary for the wellbeing of the workers in terms of his social status.

Article 43 of the Constitution of India states that the state shall endeavour to secure by suitable legislation or economic organisation or in any other way to all workers a living wage, conditions of work ensuring a decent standard of life and full enjoyment of pleasure and social and cultural opportunities. Thus, Government of India has adopted as one of the directives of the principle of state policy to ensure living wages.

(2) Minimum Wages- The minimum wage may be defined as the lowest wage necessary to maintain a worker and his family at the minimum level of subsistence, which includes food, clothing and shelter. When the government fixes minimum wage in a particular trade, the main objective is not to control or determine wages in general but to prevent the employment of workers at a wage below an amount necessary to maintain the worker at the minimum level of subsistence.

Minimum wage in a country is fixed by the government in consultation with business organisations and trade unions. The law relating to the minimum wage either states definitely the wage considered to be the minimum or the determination of the wage left to an administrative commission which from time to time determines the minimum wage according to the varying economic conditions, e.g., variation in the price level should be compensated with the variation in the wage rates because the prime aim of the minimum wage law is just to cover "minimum living cost." The authority entrusted with the task of fixing of minimum wage should consider such factors as local economic conditions, transportation cost and the size of the units in the industry in fixing minimum wages.

The Government of India passed a Minimum Wage Act in 1948 under which farm labourers were to be paid a minimum wage between 66 paise and Rs. 1.50 per day, keeping in view local costs and standards of living. Since conditions in various parts of the country were different, the law allowed different rates of wages to be fixed in a poor country such as India. In practice, it was very difficult to enforce minimum wages effectively. Fortunately, the recent inflationary situation had pushed up the rural wages much above the minimum wages fixed by law.

Minimum wages legislation is supposed to have the following benefits:

- i. These laws prevent unscrupulous employers from exploiting ignorant persons who possess very little bargaining power.

- ii. These abolish the competition of the lower strata of workers with the upper grades and tend to prevent depressing of wages.
- iii. The productivity of industry is increased by foreign employers to use the most efficient production methods and the most modern equipment, in order to enable employees to earn the living wage. But at the same time, the workers are stimulated to increase his efficiency in order to hold his job.
- iv. Employers with high standards are protected against underselling by competitors with low standards.

But some critics of the minimum wage assert that it is impossible for a group of men to control the wages of labour by law because wages depend upon the supply and demand of labour. Minimum wages are a heavy burden to the society because persons unable to earn a living wage will be unemployed whereas earning of small wage is preferred to idleness or living on charity. However, basically, minimum wage laws are not wrong if they are wisely framed and applied. It is perfectly feasible to fix a minimum wage and forbid employment below that figure. Some industries that cannot profitably pay the wages fixed may be forced to wind up because of the financial burden. But, then, what is the use of an industry if it cannot even pay a living wages to its workers and it is better to dispense with it. Industries that can pay a living wage should, if necessary be forced to do so. The difficulties to be encountered are rather those of practical operation. The administration of the modern industry is very tedious due to the complexity of the wage system. However, if the wage limit is fixed at the very lowest minimum, the risk is slight.

(3) Fair Wages- A fair wage is something more than the minimum wages. Fair wage is a mean between the living wage and the minimum wage. While the lower limit of the fair wage must obviously be the minimum wage, the upper limit is the capacity of the industry to pay fair wage compares reasonably with the average payment of similar task in other trades or occupations requiring the same amount of ability. Fair wage depends on the present economic position as well as on its future prospects. Thus the fair wages depends upon the following factors:

- (1) Minimum Wages
- (2) Capacity of the industry to pay
- (3) Prevailing rates of wages in the same or similar occupations in the same or neighboring localities
- (4) Productivity of labour
- (5) Level of national income and its distribution.
- (6) The place of the industry in the economy of the country.

Q. Discuss the procedure to be followed in fixing the minimum rate of wages in an industry.

FIXATION OF MINIMUM RATES OF WAGES [Section 3(1)(a)]

Section 3 lays down that the 'appropriate Government' shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part ii of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [*Basti Ram v. State of A.P. A.I.R. 1969, (A.P.) 227*].

The constitutional validity of Section 3 was challenged in *Bijoy Cotton Mills v. State of Ajmer, 1955 S.C. 3*. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guarantee under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed and in the interest of general public and with a view to carrying out one of the Directive Principles of the State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

Notwithstanding the provisions of Section 3(1)(a), the "appropriate Government" may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are

engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

REVISION OF MINIMUM WAGES

According to Section 3(1)(b), the 'appropriate Government' may review at such intervals as it may think fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

MANNER OF FIXATION/REVISION OF MINIMUM WAGES

According to Section 3(2), the 'appropriate Government' may fix minimum rate of wages for:

- a. time work, known as a Minimum Time Rate;
- b. piece work, known as a Minimum Piece Rate;
- c. a "Guaranteed Time Rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and
- d. a "Over Time Rate" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee. Section 3(3) provides that different minimum rates of wages may be fixed for –
 - i. different scheduled employments;
 - ii. different classes of work in the same scheduled employments;
 - iii. adults, adolescents, children and apprentices;
 - iv. different localities

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- i. by the hour,
 - ii. by the day,
 - iii. by the month, or
 - iv. by such other large wage periods as may be prescribed;
- and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated. However, where wage period has been fixed in accordance with the Payment of Wages Act, 1986 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

MINIMUM RATE OF WAGES (Section 4)

According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government under Section 3 may consist of –

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or
- (ii) a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates were so authorized; or
- (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions specified or given by the appropriate Government.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (Section 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]: This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages.

The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

It was held in **Edward Mills Co. v. State of Ajmer (1955) A.I.R. SC**, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations.

As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government.

Second Method [Section 5(1)(b)]: The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. **[1996 II LLJ 267 Kar.]**

ADVISORY BOARD

The advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of coordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government.

It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment; **B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union A.I.R. (1963) S.C. 806**. An independent person in the context of Section 9 means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. In the case of **State of Rajasthan v. Hari Ram Nathwani, (1975) SCC 356**, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.

CENTRAL ADVISORY BOARD

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

Q. What is the remedy available to the worker who has been paid less than the minimum rates of wages? State the procedure for the final determination of dispute. When Court will not entertain any complaint?

Appointment: The appropriate government by notification in the legal gazette may appoint the following officers are listed below.

- The presiding officer of any Labour court.
- The presiding officer of any Industrial tribunal.
- Any Commissioner for Workmen's Compensation.
- Any officer with experience as a Judge of a Civil Court or as a Judicial Magistrate to be the 'Authority' to hear and decide the claims arising out of deductions from the wages, or delay in payment of the wages of employed persons.

Application: Where payment of wages have been delayed, or any deduction has been made from wages, the request can be made to the Authority by the Person himself or any legal practitioner or any official of a registered trade union, duly authorised in writing or an inspector under this Act or any other person acting with the permission of the authority.

Process

- The prescribed authority can hear the applicant and the employer or another person responsible for the payment of wages.
- The Authority will direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation.
- The compensation should not exceed ten times the amount deducted in the former case and not exceeding 3000 rupees but not less than 1500 rupees.
- No compensation can be made in the case of delayed wages if the authority is satisfied with
- The delay was due to bonafide error or dispute as to the amount payable to the employed person.
- The person responsible was unable to make the payment due to exceptional circumstances, even though exercised due diligence.
- The delay was due to the failure of the employed person to apply for or accept payment.

Appeal: An Appeal against an order of the Authority should be made within 30 days of the date of the concern order or direction, before Court of Small Causes and otherwise before the District Court.

Q. Discuss elaborately the qualification, powers and function of Inspector under the Minimum Wages Act, 1948.

Section 19 (1) of Minimum Wages Act, 1948 says that the appropriate Government can appoint such persons, by notification, as Inspectors and define the local limits within which they shall exercise their function. The Inspectors are deemed to be public servants as per Section 21 of the Indian Penal Code, 1860.

Powers and Functions of the Inspector

Section 19 (1) empowers Inspectors to:

- Enter any premises or place, at all reasonable hours, with such assistants, where employees are employed to work or work is given out to out-workers, for the purpose of examining any register, record of wages or notices required to be kept or exhibited by or under this Act or rules made thereunder.
- Examine any person who is an employee employed therein or employee to whom work is given out therein
- Require any person to give any information, with respect to names and addresses of the persons, to, for and from whom the work is given out and with respect to payments to be made for the work
- Seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offense under the Act.
- Exercise such other powers as many be prescribed.
- **Section 19 (4)** says that any person required to produce any document or thing or to give any information by an inspector shall be deemed to be legally bound to do so with the meaning of Section 175 and Section 176 of Indian Penal Code, 1860

Q. What are the procedures for determination of period of wages and how the wages of the employee will be disbursed?

Responsibility for payment of wages

Section 3 provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Act. However, in the case of persons employed in factories if a person has been named as the manager of the factory; in the case of persons employed in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments; in the case of persons employed upon railways if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned; in the case of persons employed in the work of contractor, a person designated by such contractor who is directly under his charge; and in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

It may be noted that as per section 2(ia) "employer" includes the legal representative of a deceased employer.

Fixation of wage period: As per section 4 of the Act every person responsible for the payment of wages shall fix wage-periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

Time of payment of wages: Section 5 specifies the time payment of wages. The wages of every person employed upon or in any railway factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day.

The wages of every person employed upon or in any other railway factory or industrial or other establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable. However, in the case of persons employed on a dock wharf or jetty or in a mine the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case may be shall be paid before the expiry of the seventh day from the day of such completion.

Where the employment of any person is terminated by or on behalf of the employer the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated. However, the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognised holiday the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

The Appropriate Government may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons

employed upon any railway or to persons employed as daily-rated workers in the Public Works Department of the Appropriate Government from the operation of this section in respect of wages of any such persons or class of such persons. All payments of wages shall be made on a working day.

Wages to be paid in current coin or currency notes: As per section 6 of the Act, all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorisation of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Deductions from the wages of an employee: Section 7 of the Act allows deductions from the wages of an employee on the account of the following:- (i) fines; (ii) absence from duty; (iii) damage to or loss of goods expressly entrusted to the employee; (iv) housing accommodation and amenities provided by the employer; (v) recovery of advances or adjustment of overpayments of wages; (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (vii) subscriptions to and for repayment of advances from any provident fund; (viii) income-tax; (ix) payments to co-operative societies approved by the State Government or to a scheme of insurance maintained by the Indian Post Office; (x) deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

Q. Define 'workmen' under the Workmen's compensation Act, 1923.

WORKMEN / EMPLOYEE: The definition of workmen has been replaced by the definition of employee. The term "employee" has been inserted by the Workmen's Compensation (Amendment) Act, 2009 under a new clause (dd) in Section 2 of the Act. Clause (n) defining "workman" has been omitted. Under Section 2(dd) "employee" has been defined as follows:

"Employee" means a person, who is –

- (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or
- (ii) (a) a master, seaman or other members of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle.
(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or
- (iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been" injured shall, where the employee is dead, include a reference to his dependents or any of them;

Q. State the liabilities of 'Principal' and 'Contractor' in respect of compensation payable under the Workmen Compensation Act.

Section 3 of the Act provides for employer's liability for compensation in case of occupational disease or personal injuries and prescribes the manner in which his liability can be ascertained.

(a) In cases of occupational disease

- (i) Where an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein, as an occupational disease, peculiar to that employment, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment.

(ii) Where the employee employed in any employment specified in Part B of Schedule III, for a continuous period of not less than six months under the same employer, and whilst in the service contracts any disease specified in the Part B of Schedule III, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment. The employer shall be liable even when the disease was contracted after the employee ceased to be in the service of the employer, if such disease arose out of the employment.

(iii) If an employee whilst in service of one or more employers (not necessarily the same employer) in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify, contracts any disease, even after he ceased to be in the service of any employer and disease arose out of such employment, specified in the Schedule, the contracting of disease shall be deemed to be an injury by accident arising out of and in the course of employment. However, where the employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may in circumstances deem just. [Section 3(2A)]

(iv) If it is proved:

(a) that the employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment;

the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section.

(v) The Central Government or the State Government after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of Sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(vi) Except as mentioned above no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(b) In case of personal injury

As regards personal injury, the employer becomes liable if the injury is caused to an employee by accident arising out of and in the course of his employment.

(i) Personal injury: There must be personal injury caused to an employee.

Normally, Injury implies physical or bodily injury caused by an accident. However, such personal injury will also include nervous shock or break-down or mental strain. In the case of Indian ***News Chronicle v. Mrs. Lazarus, A.I.R. 1961, Punj. 102***, an electrician who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. It was held that the injury caused by an accident is not confined to physical injury and the injury in the instant case was due to his working and going from a heating room to a cooling plant as it was his indispensable duty.

(ii) Accident: The personal injury must be caused by an "accident". The term "accident" has not been defined in the Act but its meaning has been sufficiently explained in number of decided cases.

The expression accident must be construed to its popular sense. It has been defined as a mishap or an untoward event which is not expected or designed. What the Act intends to cover is what might be expressed as an accidental injury.

In the case of **Smt. Sunderbai v. The General Manager, Ordinance Factory Khamaria, Jabalpur, 1976 Lac. I.C. 1163 (MP)**, the Madhya Pradesh High Court has clarified the difference between accident and injury. Accident means an untoward mishap which is not expected or designed by workman, 'Injury' means physiological injury. Accident and injury are distinct in cases where accident is an event happening externally to a man, e.g., where a workman falls from the ladder and suffers injuries. But accident may be an event happening internally to a man and in such cases accident and injury coincide. Such cases are illustrated by failure of heart and the like, while the workman is doing his normal work. Physiological injury suffered by a workman mainly due to the progress of disease unconnected with employment may amount to an injury arising out of and in the course of employment if the work, that the workman was doing at the time of the occurrence of the injury contributed to its occurrence. The connection between employment must be furnished by ordinary strain of ordinary work if the strain did in fact contribute to accelerate or hasten the injury. The burden of proof is on applicant to prove the connection of employment and injury.

(iii) Arising out of employment and in the course of employment: To make the employer liable, it is necessary that the injury is caused by an accident which must be raised out of and in the course of employment.

Arising out of employment: The expression "arising out of employment" suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment (**Laxmibai Atma Ram v. Bombay Port Trust, AIR 1954 Bom.180**). Generally, if an employee is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

In the case of **Mackenzie v. I.M. Issak**, it was observed that the words arising out of employment means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered.

There must be a causal relationship between the accident and the employment. If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence.

The Supreme Court in **Mackinnon Mackenzie and Co. (P.) Ltd. v. Ibrahim Mohammed Issak, AIR 1970 S.C. 1906** approving the observation of Lord Summer made in **Lancashire and Yorkshire Railway Co. v. Highley, 1917 A.C. 352**, observed that the test is: was it part of the injured persons employment to hazard, to suffer or to do that which caused his injury? If yes, the accident arose out of his employment, if not, it did not.

Arising in the course of employment: The expression "in the course of employment" suggests the period of employment and the place of work. In other words, the workman, at the time of accident must have been employed in the performance of his duties and the accident took place at or about the place where he was performing his duties.

The expression "employment" is wider than the actual work or duty which the employee has to do. It is enough if at the time of the accident the employee was in actual employment although he may not be actually turning out the work. Even when the employee is resting, or having food, or taking his tea or coffee, proceeding from the place of employment to his residence, and accident occurs, the accident is regarded as arising out of and in the course of employment.

Employment – The word "employment" has a wider meaning than work. A man may be in course of his employment not only when he is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out of it (**Union of India v. Mrs. Noorjahan, 1979 Lab. I.C. 652**).

For the expression “accident arising out of and in the course of employment” the basic and indispensable ingredient is unexpectedness. The second ingredient is that the injury must be traceable within reasonable limits, to a definite time, place or occasion or cause. The Act should be broadly and liberally constructed in order to effectuate the real intention and purpose of the Act.

(iv) Theory of notional extension of employment

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when he was doing his master's job.

It is well settled that the concept of “duty” is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment (**Weaver v. Tradegar Iron and Coal Co. Ltd., (1940) 3 All, ER 15**).

It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment and his wife is entitled for compensation (**Naima Bibi v. Lodhne Colliery (1920) Ltd., 1977 Lab. I.C. NOC 14**).

If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment (**TNCS Corporation v. Poonamalai, 1994 II LLN 950**).

(v) When employer is not liable

In the following cases, the employer shall not be liable:

- (i) When the injury does not result in disablement for a period exceeding 3 days.
- (ii) When the injury not resulting in death or permanent total disability is due to any of the following reasons:
 - (a) the employee was at the time of accident, under the influence of drink or drugs, or
 - (b) the employee willfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or
 - (c) the employee, willfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of the employee.

Thus, where a employee dies due to an accident arising out of and in the course of employment, it cannot be pleaded that death was due to any of the reasons stated from (a) to (c) (**R.B. Moondra & Co. v. Mst. Bhanwari, AIR, 1970 Raj. 111**).

(c) Suit for damages in a Court barred

Under Section 3(5), an employee is not entitled to any compensation under the Workmen's Compensation Act, 1923, if he has instituted, in a Civil Court, a suit for damages against the employer or any other person.

Similarly, an employee is prohibited from instituting a suit for damages in any court of law, (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or (b) if the employee and the employer have entered into an agreement for the payment of compensation in accordance with the provisions of this Act.

EMPLOYER'S LIABILITY WHEN CONTRACTOR IS ENGAGED

Section 12 of the Act envisages the employer's liability to pay compensation to a contractor.

(i) Sometimes, employer may engage a contractor instead of employing his own employee for the purpose of doing any work in respect of his trade or business. Such a contractor then executes the work with the help of the employee engaged by him. If any injury is caused by an accident to any of these employees, the employer cannot be held liable because they are not employed by him and hence are not his employees. But now Section 12(1) makes the employer liable for compensation to such employees hired by the contractor under following circumstances:

- i. The contractor is engaged to do a work which is part of the trade or business of the employer (called principal).
- ii. The employee was engaged in the course of or for the purpose of his trade or business.
- iii. The accident occurred in or about the premises on which the principal employer has undertaken or undertakes to execute the work concerned.

The amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(ii) According to Section 12(2), where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section, he shall be entitled to be indemnified by any person standing to him in relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(iii) The above provision, however, does not prevent an employee from recovering compensation from the contractor instead of the employer, i.e., the Principal. [Section 12(3)]

(iv) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be to execute the work or which are otherwise under his control or management. [Section 12(4)]

Following illustrative cases will further clarify the law laid down in Section 12:

(a) A Municipal Board entrusted the electrification work of the town to State employees. A employee received injuries while performing his work. Held, it is the State and not the Board, liable to pay compensation because execution of electrical project is not the ordinary business of the Municipal Board (**A.I.R. 1960 All 408**).

(b) A contractor was entrusted with the repairs of a defective chimney. An employee engaged by him was injured while carrying out repairs. Held, mill was not liable for compensation as the repairing of chimney is not the part of company's trade or business, whether ordinarily or extraordinarily.

(c) A cartman was engaged by a Rice Mill to carry rice bags from mill to railway station. The cartman met with an accident on a public road while returning back from railway station and this resulted in his death. There was no evidence to show that employee was engaged through a contractor. In a suit for compensation against the mill owner, it was observed that Section 12 is not applicable where the accident arises out of and in the course of employment. Even assuming that the deceased was in the employment of contractor engaged by the employer, the liability of the owner was clear from Section 12(1) and it had not been excluded by reason of Section 12(4).

Q. Discuss compensation under the Workmen's Compensation Act, 1923.

(i) Meaning of compensation: "Compensation" has been defined under Section 2(1)(c) of the Act to mean compensation as provided for by this Act. The meaning of the term will be clearer in the following paragraphs.

(ii) Amount of compensation: Amount of compensation is payable in the event of an employee meeting with an accident resulting into temporary or permanent disability or disease as stated in Schedule II and III in terms of Section 4 of the Act, read with Schedule IV.

Schedule II contains a list of persons engaged in different employments/ operations specified therein who are covered by the definition of employee and entitled to compensation e.g. a person employed for

loading/unloading of materials in a factory or ship, persons employed in work incidental or connected with manufacturing process. Schedule III contains a list of occupational diseases which if contracted while in employment entitles a employee to compensation such as disease caused by lead, mercury, etc. Schedule IV lays down the relevant factor (a certain figure) related to the age of the employee at the time of death, injury or accident by which wages are multiplied to arrive at compensation.

(iii) Compensation to be paid when due and penalty for default: *Time of payment of compensation:* Section 4A of the Act provides that compensation under Section 4 shall be paid as soon as it falls due. Compensation becomes due on the date of death of employee and not when Commissioner decides it (***Smt. Jayamma v. Executive Engineer, P.W.D. Madhugiri Division, 1982 Lab. I.C. No 61***).

The employer is required to deposit or to make provisional payment based on the extent of liability which he accepts with the Commissioner or hand over to the employee as the case may be even if the employer does not admit the liability for compensation to the extent claimed.

Where an employer is in default in paying compensation, he would be liable to pay interest thereon and also a further sum not exceeding fifty percent of such amount of compensation as penalty. The interest and the penalty stated above is to be paid to the employee or his dependent as the case may be.

(iv) Method of calculating wages: Monthly wages mean the amount of wages deemed to be payable for a month's service and calculated as follows:

(a) Where the employee has, during a continuous period of not less than 12 months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be 1/12th of the total wages which have fallen due for payment to him by the employer in the last 12 months of that period.

(b) Where the whole of the continuous period of service was less than one month, the monthly wages of the employee shall be the average monthly amount which during the 12 months immediately preceding the accident was being earned by an employee employed on the same work by the same employer, or, if there was no employee so employed, by an employee employed on similar work in the same locality.

(c) In other cases, including cases in which it is not possible to calculate the monthly wages under clause (b), the monthly wages shall be 30 times the total wages earned in respect of the last continuous period of service, immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period. (Section 5)

A period of service shall be deemed to be continuous which has not been interrupted by a period of absence from work exceeding 14 days.

(v) Review of half-monthly payment: Section 6 of the Act provides that any half-monthly payment payable under this Act, either under an agreement between the parties or under the order of a Commissioner may be reviewed by the Commissioner on the application either of the employer or of the employee accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the employee or subject to rules made under this Act, an application made without such certificate.

Any half monthly payment, may on review, under the above provisions be continued, increased, decreased or ended, or if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the employee is entitled less any amount which he has already received by way of half-monthly payments.

(vi) Commutation of half monthly payments: Section 7 of the Act provides that any right to receive half-monthly payments may, by agreement between the parties or if the parties cannot agree and the payments have been continued for not less than 6 months on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner as the case may be.

(vii) Distribution of compensation: No compensation has to be paid in respect of an employee whose injury has resulted in death and no payment of lump sum compensation to a woman or a person under a legal disability except by deposit with the Commissioner. The employer cannot make payment of compensation directly to the deceased legal heirs. It is the Commissioner who decides on the distribution of compensation to the legal heirs of the deceased employee. (Section 8)

Right to claim compensation passes to heirs of dependent as there is no provision under the Act to this effect **(AIR 1937 Cal. 496)**. Payment of *ex-gratia* or employment on compassionate grounds will not be employers' liability **(LAB IC 1998 JK 767)**.

(viii) Compensation not to be assigned etc.: Save as provided by this Act, no lump sum or half-monthly payment payable under this Act can be assigned, or charged or attached or passed to any person other than the employee by operation of law nor can any claim be set-off against the same. (Section 9)

(ix) Compensation to be first charge: The compensation money shall bear the first charge on the assets transferred by the employer. It says that where an employer transfers his assets before any amount due in respect of any compensation, the liability whereof accrued before the date of transfer has been paid, such amount shall, notwithstanding anything contained in any other law for the time being in force, be a first charge on that part of the assets so transferred as consists of immovable property. (Section 14A)

(x) Insolvency of employer and the compensation: Following provisions under Section 14 of the Act have been made in this respect:

- I. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any employee, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the employee, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the employee than they would have been under the employer.
- II. If the liability of the insurers to the employee is less than the liability of the employer to the employee, the employee may prove for the balance in the insolvency proceedings or liquidation.
- III. Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the employee. But the employee is required to give notice of accident and resulting disablement therefrom to the insurers as soon as possible after he becomes aware of the insolvency or liquidation proceedings otherwise the above provisions shall not be applied.
- IV. There shall be deemed to be included among the debts which under Section 49 of the Presidency Towns Insolvency Act, 1909, or under Section 61 of the Provincial Insolvency Act, 1920 or under Section 530 of the Companies Act, 1956, are in the distribution of property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.
- V. Where the compensation is half-monthly payment, the amount due in respect thereof shall, for the purposes of this Section, be taken to be the amount of the lump sum for which the half-monthly, payment could, if redeemable be redeemed if application were made for that purpose under Section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

- VI. The provisions of sub-section (iv) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (iii) but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as if referred to in sub-section (i).
- VII. This Section shall not apply where a company is wound up voluntarily merely for purpose of reconstruction or of amalgamation with another company.

(xi) Contracting out of compensation: Section 17 provides that any contract or agreement whereby an employee relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. (Section 17)

Q. Discuss the power of commissioner under the Workman's Compensation Act, 1923 for awarding of compensation.

(i) Appointment of Commissioners: Section 20 as amended by the Workmen's Compensation (Amendment) Act, 2009 provides that the State Government may, by notification in the Official Gazette, appoint any person who is or has been a member of a State Judicial Service for a period of not less than five years or is or has been for not less than five years an advocate or a pleader or is or has been a Gazetted Officer for not less than five years having educational qualifications and experience in personal management, human resource development and industrial relations to be a Commissioner for Employee's Compensation for such area as may be specified in the notification. Where more than one Commissioner has been appointed for any area, the Government may by general or special order regulate the distribution of business between them.

Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code. Section 20(3) empowers the Commissioner to appoint or choose any person, possessing special knowledge of any matter relevant to the matter under inquiry, to assist him in holding the inquiry.

(ii) Reference to Commissioner and his jurisdiction: Section 19(1) lays down jurisdiction of a Commissioner to entertain a claim in respect of payment of compensation to an employee. The Commissioner is empowered in default of an agreement to settle any question which may arise in any proceeding under this Act as to the liability of any person to pay compensation, and in particular, the Commissioner has jurisdiction over following matters:

- i. Liability of any person to pay compensation.
- ii. Whether a person injured is or is not an employee?
- iii. The nature and extent of disablement.
- iv. The amount or duration of compensation.

If an application is made under the Employee's Compensation Act to the Commissioner, he has, by virtue of Section 19(1) of the Act, jurisdiction to decide any question as to the liability of any person including an insurer to pay compensation. Section 19(2) further provides that the enforcement of that liability can only be made by him. The Commissioner's jurisdiction is wide enough to decide the tenability of the objections; the consequential direction of the Commissioner to the insurer to pay is also covered under Section 19(1). In any event in execution of the order against the insured, namely, the employer, the Commissioner can enforce his liability against the insurer under Section 31. In the light of Section 19 read along with Section 31, the order of the Commissioner can never be challenged as being without jurisdiction (***United India Fire & General Insurance Co. Ltd. v. Kamalalshi (1980) 2 LLJ 408***).

(iii) Jurisdiction of Civil Court barred: No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act. [Section 19(2)] However, where the Commissioner has no jurisdiction to decide any matter and even fails to decide when raised, thereby leaving a party without any

defence the Civil Court will have jurisdiction to entertain such suits (*Madina Saheb v. Province of Madras, AIR1946 Mad. 113*).

(iv) Venue of proceedings and transfer: Section 21 dealing with venue of proceedings and transfer of cases under the Act provides that:

(1) Where any matter under this Act is to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the area in which:

- (a) the accident took place which resulted in the injury; or
- (b) the employee or in case of his death, the dependent claiming the compensation ordinarily resides; or
- (c) the employer has his registered office:

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned.

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner of agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under Section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or money remaining with the latter and on receipt of such a request, he shall comply with the same.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependents of a lump sum without giving such party an opportunity of being heard.

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire thereto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under Subsection (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it. The section deals with territorial jurisdiction of Commissioner under the Act. Further, for the first time the procedure for deciding case under the Act regarding accident having place outside India [second proviso to Sub-section (1) of Section 21] has been provided for. This is further clear from the fact that a Commissioner can transfer the matter to another Commissioner under Section 21(2) of the Act under specified circumstances.

(v) Form of application: All claims for compensation subject to the provision of the Act shall be made to the Commissioner. But such applications other than the applications made by dependent or dependents can only be submitted when the parties have failed to settle the matter by agreement.

An Application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed and shall contain, in addition to any particulars which may be prescribed, the following particulars namely:

- (a) a concise statement of the circumstances in which the application is made and the relief of order which the applicant claims;
- (b) in the case of a claim for compensation against an employer, date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;
- (c) the names and addresses of the parties; and
- (d) except in the case of an application by dependents for compensation, a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner. (Section 22)

However, any defect in the application, e.g., when it is not in the prescribed form cannot be fatal to the claim. Any such irregularity can be rectified with the permission of the Commissioner at any stage (***M.B. & G. Engineering Factory v. Bahadur Singh, AIR 1955 All 182***).

(vi) Power of the Commissioner to require further deposit in case of fatal accident: Where the Commissioner is of the opinion that any sum deposited by the employer as compensation payable on the death of an employee, is insufficient, he is empowered to call upon, by a notice in writing stating his reasons, the employer to show cause why he should not make a further deposit within a stipulated period. If the employer fails to show cause to the satisfaction of the Commissioner, the Commissioner may make an award determining the total amount payable and requiring him to deposit the deficiency. (Section 22A)

(vii) Powers and procedure of Commissioners: The Commissioner shall have for the following purposes, all the powers of a Civil Court under the Code of Civil Procedure, 1908 for the purpose of:

- (a) taking evidence on oath;
- (b) enforcing the attendance of witnesses; and
- (c) compelling the production of documents and material objects.

Further, for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, he shall be deemed to be a Civil Court. (Section 23)

(viii) Appearance of parties: Any appearance, application or act required to be made or done by any person before or to a Commissioner other than an appearance of a party which is required for the purpose of his examination as a witness, may be made or done on behalf of such person, by a legal practitioner or by an official of an Insurance Company or registered Trade Union or by an Inspector appointed under Section 8(1) of the Factories Act, 1948, or under Section 5(1) of the Mines Act, 1952 or by any other officer specified by the State Government in this behalf, authorised in writing by such person, or, with the permission of the Commissioner by any other person so authorised. (Section 24)

(ix) Method of recording evidence: The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form a part of the record.

Provided that: If the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same and such memorandum shall form a part of the record. Further, the evidence of any medical witness shall be taken down as nearly as may be word for word. (Section 25)

In the case of ***M.S.N. Co. Ltd. v. Mohd. Kunju, AIR 1956 Trav. Co. 935***, it was held that the Commissioner should not make a medical certificate the basis of his award unless he has examined the concerned medical officer.

Time Limit for disposal of cases relating to compensation: A new Section 25A has been inserted by the Workmen's Compensation (Amendment) Act, 2009 providing for the time Limit for disposal of cases relating to compensation. As per Section 25A, the Commissioner shall dispose of the matter relating to compensation within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

(x) Costs: All costs, incidental to any proceedings before a Commissioner, shall subject to rules made under this Act, be in the discretion of the Commissioner. (Section 26) However, the Commissioner must use his discretion judiciously.

(xi) Power to submit cases: A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision. (Section 27)

(xii) Registration of agreements: Section 28 makes it obligatory for the employer to send a memorandum to the Commissioner where amount of any lump sum payable as compensation has been settled by agreement:
(a) whether by way of redemption of a half-monthly payment or otherwise, or
(b) where an compensation has been settled as being payable to a woman or a person under a legal disability.

The Commissioner shall record the memorandum in a register in the prescribed manner, after he has satisfied himself as to its genuineness provided that the Commissioner has given at least 7 days' notice to the parties concerned before recording such memorandum. The Commissioner may at any time rectify the register.

The Commissioner may refuse to register the memorandum on the following grounds:

- (a) Inadequacy of the sum or amount settled; or
- (b) Agreement obtained by fraud or undue influence or other improper means.

The Commissioner may in such a situation make such order including an order as to any sum already paid under the agreement, as he thinks just in the circumstances. An agreement which has been registered as aforesaid shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, or in any other law for the time being in force.

(xiii) Effect of failure to register agreement: Where a memorandum of any agreement, the registration of which is required by Section 28 is not sent to the Commissioner as required by that Section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to sub-section (1) of Section 4, shall not unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the employees by way of compensation whether under the agreement or otherwise. (Section 29)

APPEALS

An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- (aa) an order awarding interest or penalty under Section 4A;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependents of a deceased employee or disallowing any claim of a person alleging himself to be such dependent;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Subsection (2) of Section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions. (Section 30)

Such appeal should be filed within 60 days of order. The section empowers appellate Court to infer with findings recorded by commissioner only in case of substantial error of law (**LLJ II 1998 Kar. 764**). The provisions of Section 5 of Limitation Act, 1963 shall be applicable to appeals under the Section.

No appeal shall lie unless the following requirements are fulfilled:

- (i) A substantial question of law is involved in the appeal.
- (ii) In case of order, other than order refusing to allow redemption of a half-monthly payment, unless the amount in dispute in the appeal is not less than three hundred rupees;
- (iii) The memorandum of appeal should be accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against. Deposit of compensation amount is alone contemplated: deposit of penalty or interest is not condition precedent for filing appeal (**LLJ I 1999 Kar. 60**).
- (iv) The appeal does not relate to any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

Jurisdiction conferred on High Court being special any further appeal against the judgement is barred. No. leave petition was therefore held maintainable (**LLJ I 1998 1122 Pat.**). Finding whether the claimant was a employee arrived by commissioner on material on record is a fact hence no further appeal is allowed (**LAB IC 1998 Ori.3254**).

Withholding of certain payments pending decision of appeal: Where an employer makes an appeal under clause (a) of sub-section (1) of Section 30, the Commissioner may, and if so, directed by the High Court, shall, pending the decision of the appeal, withhold payment of any sum in deposit with him. (Section 30A)

Recovery: The Commissioner may recover, as an arrear of land revenue, any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act, 1890. (Section 31)

Q. Write Short notes on Partial Disablement and Total Disablement.

DISABLEMENT: The Act does not define the word Disablement. It only defines the partial and total disablement. After reading the partial or total disablement as defined under the Act one may presume that disablement is loss of earning capacity by an injury which depending upon the nature of injury and percentage of loss of earning capacity will be partial or total. The Act has classified disablement into two categories, viz. (i) Partial disablement, and (ii) Total disablement.

(i) Partial disablement: Partial disablement can be classified as temporary partial disablement and permanent partial disablement.

(a) Where the disablement is of a temporary nature: Such disablement as reduces the earning capacity of an employee in the employment in which he was engaged at the time of the accident resulting in the disablement; and

(b) Where the disablement is of a permanent nature: Such disablement as reduces for all time his earning capacity in every employment which he was capable of undertaking at the time. [Section 2(1)(g)] But every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement. Schedule I contains list of injuries deemed to result in Permanent Total/Partial disablement.

In case of temporary partial disablement, the disablement results in reduction of earning capacity in respect of only that employment in which he was engaged at the time of accident. This means the employee's earning capacity in relation to other employment is not affected. But in case of permanent partial disablement, the disablement results in reduction in his earning capacity in not only the employment in which he was engaged at the time of accident but in all other employments. Whether the disablement is temporary or permanent and

whether it results in reduction of earning capacity, the answer will depend upon the fact of each case, except when the injury is clearly included in Part II of Schedule I.

In the case of **Sukhai v. Hukam Chand Jute Mills Ltd., A.I.R. 1957 Cal. 601**, it was observed: "If a workman suffers as a result of an injury from a physical defect which does not in fact reduce his capacity to work but at the same time makes his labour unsaleable in any market reasonably accessible to him, there will be either total incapacity for work when no work is available to him at all or there will be a partial incapacity when such defect makes his labour saleable for less than it would otherwise fetch. The capacity of a workman may remain quite unimpaired, but at the same time his eligibility as an employee may be diminished or lost if such a result ensues by the reason of the results of an accident, although the accident has not really reduced the capacity of the workman to work. He can establish a right to compensation, provided he proves by satisfactory evidence that he has applied to a reasonable number of likely employers for employment, but had been turned away on account of the results of the accident visible on his person."

If after the accident a worker has become disabled, and cannot do a particular job but the employer offers him another kind of job, the worker is entitled to compensation for partial disablement (**General Manager, G.I.P. Rly. v. Shankar, A.I.R. 1950 Nag. 307**).

Deemed to be permanent partial disablement: Part II of Schedule I contains the list of injuries which shall be deemed to result in permanent partial disablement. Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent to the loss of that limb or member.

Note to Schedule I – On the question whether eye is a member or limb as used in the note to Schedule I it was held that considering the meaning as stated in the Oxford Dictionary as also in the Medical Dictionary, it could be said that the words limb or member include any organ of a person and in any case it includes the eye (**Lipton (India) Ltd. v. Gokul Chandran Mandal; 1981 Lab. I.C. 1300**).

(ii) Total disablement: Total disablement can also be classified as temporary total disablement and permanent total disablement. "Total disablement" means, such disablement whether of a temporary or permanent nature, which incapacitates an employee for all work which he was capable of performing at the time of accident resulting in such disablement. Provided further that permanent total disablement shall be deemed to result from every injury specified in Part I of Schedule I or similarly total disablement shall result from any combination of injuries specified in Part II of Schedule I, where the aggregate percentage of loss of earning capacity, as specified in the said Part II against these injuries amount to one hundred per cent or more. [Section 2(1)(I)]

Some judicial interpretations on the subject are as follows:

The expression incapacitates a workman for all work does not mean capacity to work or physical incapacity. If due to any physical defect, a workman is unable to get any work which a workman of his class ordinarily performs, and has thus lost the power to earn he is entitled to compensation for total disablement (**Ball v. William Hunt & Sons Ltd., 1912 A.C. 496**). It is immaterial that the workman is physically fit to perform some work. Thus, where a workman, though physically capable of doing the work cannot get employment in spite of his best efforts, he becomes incapacitated for all work and hence entitled to compensation for total disablement.

Loss of physical capacity is co-extensive with loss of earning capacity but loss of earning is not so co-extensive with loss of physical capacity as he may be getting the same wages even though there may be loss of physical capacity. In a case permanent partial disability caused to a workman in accident while working on ship, e.g. getting pain in his left hand and experiencing difficulty in lifting weights, it was held that workman can be said to have lost his earning capacity even though getting same amount of wages as before (**Mangru Palji v. Robinsons, 1978 Lab. I.C. 1567 (Bom.)**). Where it is not a scheduled injury the loss of earning capacity must be proved by evidence.

Where the worker lost his vision of one eye permanently in an accident in course of his employment in colliery, the compensation should be assessed in accordance with item 26 Part II in Schedule I (**Katras Jherriah Coal Co. Ltd. v. Kamakhya Paul, 1976 Lab.I.C.751**).

In an injury the workman, had amputated his left arm from elbow, who was a carpenter. It was held by the Supreme Court in **Pratap Narain Singh Deo v. Srinivas Sabata, 1976 ILab.L.J.235**, that it is a total disablement as the carpenter cannot carry his work with one hand and not a partial permanent disablement.

Where the workman, a driver of bus belonging to the employer was involved in an accident which resulted in an impairment of the free movement of his left hand disabling him from driving vehicles, it was held that this is not one of the injuries mentioned in the 1st Schedule which are accepted to result in permanent total disablement. In the present case the workman was also capable of performing duties and executing works other than driving vehicles. Nature of injury to be determined not on the basis of the work he was doing at the time of accident (**Divisional Manager KSRTC v. Bhimaiah, 1977 II L.L.J. 521**).

Q. Explain the following terms under Employee's State Insurance Act, 1948:

(a) Employee

"Employee" according to Section 2(9) as amended by the Employees' State Insurance (Amendment) Act, 2010 means any person employed for wages in connection with the work of a factory or establishment to which this Act applies and:

- i. who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by employee in the factory or establishment; or elsewhere, or
- ii. who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent, on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
- iii. whose services are temporarily lent or let on hire to the principal employer by the person with whom the person, whose services are so lent or let on hire, has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof, or with the purchase of raw materials of, or the distribution or sale of the product of the factory or establishment; or any person engaged as an apprentice, not being an apprentice engaged under Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time,;

but does not include:

- (a) any member of the Indian Naval, Military or Air Forces; or
- (b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government.

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period shall continue to be an employee until the end of that period. The Central Government has since prescribed by a Notification under Rule 50 of the E.S.I. Rules, 1950 the wage limit for coverage of an employee under Section 2(9) of the Act as Rs. 10,000 per month. Further, it is provided that an employee whose wages (excluding remuneration for overtime work) exceed Rs. 10,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period.

In the case of **Royal Talkies Hyderabad v. E.S.I.C., AIR 1978 SC 1476**, there was a canteen and cycle stand run by private contractors in a theatre premises. On the question of whether the theatre owner will be liable as principal employer for the payment of E.S.I. contributions, the Supreme Court held that the two operations namely keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered by the definition of employee as given in E.S.I. Act. The

Supreme Court observed that the reach and range of Section 2(9) is apparently wide and deliberately transcends pure contractual relationship.

Section 2(9) contains two substantive parts. Unless the person employed qualifies under both, he is not an employee. First, he must be employed in or in connection with the work of an establishment. The expression in connection with the work of an establishment ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of establishment. Some nexus must exist between the establishment and the work of employee but it may be a loose connection. The test of payment of salary or wages is not a relevant consideration. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment.

The word employee would include not only persons employed in a factory but also persons connected with the work of the factory. It is not possible to accept the restricted interpretation of the words "employees in factories". The persons employed in zonal offices and branch offices of a factory and concerned with the administrative work or the work of canvassing sale would be covered by the provisions of the Act, even though the offices are located in different towns (*Hyderabad Asbestos Cement Products, etc. v. ESIC, AIR 1978 S.C. 356*). The Act is a beneficial piece of legislation to protect interest of the workers.

The employer cannot be allowed to circumvent the Act in the disguise of ambiguous designations such as 'trainees, 'apprentices etc. who are paid regular wages, basic wages plus allowances. Such workers also fall under the Act (*LLJ-II-1996 389 AP*). Managing director could be an employee of the company. There could be dual capacity i.e. as managing director as well as a servant of the company (*ESIC v. Apex Engg. Pvt. Ltd., Scale (1997) 6 652*).

(b) Dependent

"Dependent" under Section 2(6A) of the Act (as amended by the Employees' State Insurance (Amendment) Act, 2010) means any of the following relatives of a deceased insured person namely:

- (i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years,, an unmarried legitimate or adopted daughter,
- (ia) a widowed mother,
- (ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
- (iii) if wholly or in part dependent on the earnings of the insured person at the time his death
 - i.a parent other than a widowed mother,
 - ii.a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and minor or if widowed and a minor,
 - iii.a minor brother or an unmarried sister or a widowed sister if a minor,
 - iv.a widowed daughter-in-law,
 - v.a minor child of a pre-deceased son,
 - vi.a minor child of a pre-deceased daughter where no parent of the child is alive or,
 - vii.a paternal grandparent if no parent of the insured person is alive.

(c) Disablement

Permanent Partial Disablement: It means such disablement of a permanent nature, as reduced the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement: Provided that every injury specified in Part II of the Second Schedule to the Act shall be deemed to result in permanent partial disablement. [Section 2(15A)]

Permanent Total Disablement: It means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

Provided that permanent total disablement shall be deemed to result from every injury specified in Part-I of the Second Schedule to the Act or from any combination of injuries specified in Part-II thereof, where the aggregate percentage of the loss of earning capacity, as specified in the said Part-II against those injuries, amounts to one hundred per cent or more. [Section 2(15B)]

Temporary Disablement: It means a condition resulting from an employment injury which requires medical treatment and renders an employee as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury. [Section 2(21)]

(d) Wages

"Wages" means all remuneration paid or payable in cash to an employee if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration if any, paid at intervals not exceeding two months but does not include:

- a. any contribution paid by the employer to any pension fund or provident fund, or under this Act;
- b. any travelling allowance or the value of any travelling concession;
- c. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment, or
- d. any gratuity payable on discharge. [Section 2(22)]

Wages include other additional remuneration paid at intervals not exceeding two months wages. It is question of fact in each case whether sales commission and incentive are payable at intervals not exceeding two months (*Handloom House Ernakulam v. Reg. Director, ESIC, 1999 CLA 34 SC 10*). Travelling allowance paid to employees is to defray special expenses entailed on him by nature of his employment. It does not form part of wages as defined under Section 2(22) of the E.S.I. Act. Therefore, employer is not liable to pay contribution on travelling allowance. [*S. Ganesan v. The Regional Director, ESI Corporation, Madras, 2004 Lab.I.C 1147*]

(e) Insured Person

It means a person who is or was an employee in respect of whom contributions are, or were payable under the Act and who is by reason thereof entitled to any of the benefits provided under the Act. [Section 2(14)]

Q. Explain the constitution of the 'Corporation' and 'Standing Committee' under the Employees State Insurance Act, 1948. State the law relating to resignation, cessation and disqualification of the membership of the Corporation.

EMPLOYEES' STATE INSURANCE CORPORATION

Section 3 of the Act further states that the Central Government has to establish the Corporation as per given provisions. The Corporation is basically a body corporate that has features like perpetual succession. It also has a common seal like other commercial body corporates in India. Hence, the Corporation functions as a regular body corporate. The main function of this Corporation is to implement provisions of the ESI Act and carry out its duties. Furthermore, it has to pay compensation to employees, regulate employers, frame rules and budgets for contribution, etc. In order to achieve these tasks, the Act allows the Corporation to exercise various powers through its members and officers.

Constitution of The Corporation: The corporation consists of the members representing the governments at the centre and the states, parliament, medical council, employers and employees. The chairman and vice chairman of the corporation are nominated by the central government. The director general of the corporation will be an ex officio member. He is vested with the powers to manage the affairs of the corporation.

The other members of the corporation are chosen as follows:

- a. Not more than five members nominated by the central government;
- b. One person nominated by the state government of each state in which the act is in force;
- c. One person nominated by the central government to represent the union territories;
- d. Five persons representing the employers to be nominated by the central government in consultation with the employers' organization;
- e. Five persons representing the employees nominated by the central government in consultation with the employee's organization;
- f. Two persons representing medical profession to be nominated by the central government after consulting the organizations of medical practitioners;
- g. Three members of parliament of whom two shall be from the Lok Sabha and one from the Rajya Sabha who are elected by the concerned houses.

The chairman, vice chairman, representatives of the central government, state governments and union territories hold office during the pleasure of the government concerned whereas the representatives of the employer's medical professions and parliament are to hold office even after the expiry of their tenure until the nomination of their successors is noticed.

The Term of Office Members: Members who represent employers, employees and the medical profession, as well as the MPs, have a fixed duration. Their appointment lasts for four years from the date of notification of their appointment. All other members of the Corporation may not have such a fixed tenure.

Powers of the Corporation: The ESI Corporation has extensive powers to carry out its functions and duties under the Act.

Firstly, Section 17 allows the Corporation to appoint staff members and officers for carrying out its business effectively. It may bestow provident fund, gratuity and other similar benefits on its staff.

Secondly, the Corporation has powers to purchase and sell movable as well as immovable properties. It can even raise loans and invest its money with the Central Government's sanction. In order to ensure compliance with provisions of the Act, the Corporation can appoint Social Security Officers. These officers function in their local limits and exercise jurisdiction over factories and establishments therein. All employers to whom this Act applies have to pay some contribution for the benefit of employees. The Corporation has powers to determine how much this contribution should be.

The Director-General of the Corporation has to sign on every decision it takes. He may appoint some other officer on his behalf to carry out this task.

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and reemployment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

Section 29 empowers the Corporation (a) to acquire and hold property both movable and immovable, sell or otherwise transfer the said property; (b) it can invest and reinvest any moneys which are not immediately required for expenses and or realise such investments; (c) it can raise loans and discharge such loans with the previous sanction of Central Government; (d) it may constitute for the benefit of its staff or any class of them such provident or other benefit fund as it may think fit. However, the powers under Section 29 can be exercised subject to such conditions as may be prescribed by the Central Government.

Duties of the Corporation: The Corporation performs many important duties under this Act. Most of these duties are in the nature of compliances relating to its functioning and decisions.

For example, every year the Corporation has to make a budget of its probable income and expenditure. It has to submit this report to the Central Government for its approval.

Furthermore, it has to maintain accounts of its incomes and expenses in the format that the Central Government prescribes. None other than the Comptroller & Auditor General (CAG) of India audits these accounts every year.

Other compliances of the Corporation include submission of annual reports of its activities to the Central Government. Apart from these, it has to appoint a valuer to value its assets and liabilities every three years.

Appointment of Regional Boards etc.: The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them such powers and functions, as may be provided by the regulations. (Section 25)

WINGS OF THE CORPORATION

The Corporation to discharge its functions efficiently, has been provided with two wings:

Standing Committee: The Act provides for the constitution of a Standing Committee under Section 8 from amongst its members.

Constitution of Standing Committee: The standing committee is constituted from among the members of the corporation as follows:

- a. A chairman nominated by the central government;
- b. Three members of the corporation representing three state governments as nominated by the central government;
- c. Three members of the corporation nominated by the central government;
- d. Eight members elected by the corporation from among its members;
- e. Three representing employers, three representing employees;
- f. One representing medical profession;
- g. One representing the parliament.

The chairman and representatives of the central and state governments hold office during the pleasure of the central government. The other members of the committee elected by the corporation hold office for two years from the date on which election is noticed.

Power of the Standing Committee: The Standing Committee has to administer affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation subject to the general superintendence and control of the Corporation. The standing Committee acts as an executive body for administration of Employees State Insurance Corporation. Medical Benefit Council

Section 10 empowers the Central Government to constitute a Medical Benefit Council. Section 22 determines the duties of the Medical Benefit Council stating that the Council shall:

- a. advise the Corporation and the Standing Committee on matters relating to administration of medical benefit, the certification for purposes of the grant of benefit and other connected matters;
- b. have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance; and
- c. perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

Constitution of Medical Benefit Council: The medical benefit council set up by the central government to advise the corporation on medical questions consists of the Director General of health serviced as its official chairman, Deputy Director General, medical commissioner of the corporation, three members representing the employers nominated by the Central Government, three members representing the medical profession nominated by the central government and one representative from every state nominated by the State Government. The Deputy Director General holds office during the pleasure of the Central Government. Similarly, representatives of the State Governments hold office during the pleasure of the State Government. The representatives of the employers, employees and medical profession hold the office for four years from their nomination.

The Powers And Duties of Medical Benefit Council: The council is to advise the corporation and the standing committee regarding the matters relating to the administration of medical benefits certification for the purposes of the grant of benefit and other concerned matters. The council enjoys such powers and performs such duties as may be prescribed in relation to the administration of medical benefits, in connection with the medical treatment and assistance as specified in the regulations.

Central Government's Power To Supersede The Corporation And Standing Committee: The central government is empowered to supersede the corporation or standing committee on the following grounds:

- (i) If in the opinion of the central government, the corporation or the standing committee persistently makes default in performing the duties imposed on it by or under the act; or
- (ii) If in the opinion of the central government, the corporation or standing committee abuses the powers invested on it.

Such supersession is possible only in consultation with the corporation. The Central Government shall give a reasonable opportunity to the corporation or the standing committee to show cause why it should not be superseded. When a notification superseding the corporation, or standing committee is published by the Central Government, all the members of these bodies shall be deemed to have vacated their office from the date of publication of notification.

Disqualifications: A person is disqualified to be chosen or to continue as a member of the corporation, standing committee or medical benefit council if:

- (a) He is declared to be of unsound mind by a competent court; or
- (b) He is an adjudicated insolvent; or
- (c) He has directly or indirectly by means or by his partner any interest in a subsisting contract with any work being done for the corporation except as a medical practitioner or a shareholder of a company; or
- (d) He is convicted of an offence involving the moral turpitude whether before or after this act came in to force.

Q. Discuss the Employees State Insurance Corporation Fund. Who contributes in these funds? How the payment of employers and employees are made?

EMPLOYEES' STATE INSURANCE FUND

Creation of Fund: Section 26 of the Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The Corporation may accept grants, gifts, donations from the Central or State Governments, local authority, or any individual or body whether incorporated or not, for all, or any of the purposes of this Act. A Bank account in the name of Employees' State Insurance Fund shall be opened with the Reserve Bank of India or any other Bank approved by the Central Government. Such account shall be operated on by such officers who are authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Fund may be expended

Section 28 provides that Fund shall be expended only for the following purposes:

- i. payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;
- ii. payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- iii. payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act;
- iv. establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;
- v. payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- vi. defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;
- vii. defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;
- viii. payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- ix. payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;
- x. defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- xi. defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- xii. such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

CONTRIBUTIONS

The contributions have to be paid at such rates as may be prescribed by the Central Government. The present rates of contribution are 4.75 percent and 1.75 percent of workers' wages by employers and employees respectively. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period, or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

Principal employer to pay contributions in the first instance: According to Section 40 of the Act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employer's contributions and the employee's contribution. However, he can recover from the employee (not being an exempted employee) the employees' contribution by deduction from his wages and not otherwise. Further Section 40 provides that the principal employer has to bear the expenses of remitting the contributions to that Corporation.

According to Section 39(5) of the Act, if any contribution payable is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of 12 per

cent per annum or at such higher rate as may be specified in the regulations, till the date of its actual payment. However, according to proviso to sub-section (5) of Section 39, higher interest specified in the regulations should not exceed the lending rate of interest charged by any scheduled bank. It may be noted that any interest recoverable as stated above may be recovered as an arrear of land revenue or under newly introduced Sections 45-C to 45-I of the Act.

Recovery of contribution from immediate employer: According to Section 41, principal employer who has paid contribution in respect of an employee employed by or through an immediate employer is entitled to recover the amount of contribution so paid (both employers and employees contribution) from the immediate employer either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer. However, the immediate employer is entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise. The immediate employer is required to maintain a register of employees employed by or through him as provided in the Regulations and submit the same to the principal employer before the settlement of any amount payable. He is not required to have separate account with ESI (**LAB IC 1999 Kar 1369**).

Method of payment of contribution: Section 43 provides for the Corporation to make regulations for payment and collection of contribution payable under this Act and such regulations may provide for:

- (a) the manner and time for payment of contribution;
- (b) the payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, times and conditions in, at and under which, such stamps are to be affixed or impressed;
- (c) the date by which evidence of contributions having been paid is to be received by the Corporation;
- (d) the entry in or upon books or cards or particulars of contribution paid and benefits distributed in the case of the insured persons to whom such books or card relate; and
- (e) the issue, sale, custody, production, inspection and delivery of books or cards and the replacement of books or cards which have been, lost, destroyed or defaced.

BENEFITS

Under Section 46 of the Act, the insured persons, their dependents are entitled to the following benefits on prescribed scale:

- (a) periodical payments in case of sickness certified by medical practitioner;
- (b) periodical payments to an insured workman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement;
- (c) periodical payment to an insured person suffering from disablement as a result of employment injury;
- (d) periodical payment to dependents of insured person;
- (e) medical treatment and attendance on insured person;
- (f) payment of funeral expenses on the death of insured person at the prescribed rate of.

General provisions relating to Benefits: Right to receive benefits is not transferable or assignable. When a person receives benefits under this Act, he is not entitled to receive benefits under any other enactment. An insured person is not entitled to receive for the same period more than one benefit, e.g. benefit of sickness cannot be combined with benefit of maternity or disablement, etc.

Q. Discuss elaborately the salient features of Fatal Accidents Act, 1855.

The Fatal Accidents Act, 1855 (Act 13 of 1855) confers a new right and provides that, whenever the death of a person is caused by the wrongful act, neglect or default, the wife, husband, parent (which term includes grandfather and grandmother) and child (which term includes grandson, granddaughter, stepson and stepdaughter) of the deceased person shall be entitled to recover such damages from the tortfeasor as the court may think proportionate to the loss resulting from such death to each of the parties respectively. The Act also allows two different claims to be combined in the same action; one for loss to the estate under the Legal

Representatives Suits Act and the other for loss to the dependents under Section 1 of the Fatal Accidents Act. The Loss to the estate is to be recovered by those who are entitled to the estate under the law-the heirs on intestacy, or the legatees, administrators or executors in cases of testamentary succession. The loss to the estate comprises of damages that are payable to the deceased towards physical injuries by him as representing pain and suffering and for loss of amenities for the period between the time of accident and the time of death, together with a conventional small sum towards loss of expectation of life. The loss to the dependents is the loss of the amount which would have been spent on the members of the family or the dependents of the deceased victim by the deceased during the lifetime of his expected usual life. Naturally compensation under his head is restricted to the financial loss.

Fatal Accidents Act is founded upon the need and right to pursue claims for deaths of victims due to neglect, fault or actionable wrongs of others. It has its dimensions both in criminal wrongs and civil actions. Crimes also give rise to civil remedies traceable to IPC offences as in Secs.357 and 357A of Cr.PC,1973.

There is need for social obligation of the State and Authority to be captured in statute for providing immediate relief to the affected lot, be it arising from motor accidents, air crashes, or Railway accidents, (those that get excluded under the said special regimes), or from natural disasters and calamities and/or from failure of Public Authorities in providing safe and sound service of amenities, be it electrocution cases or fall into man hole or into open bore wells . or as in cases of deaths of Andhra Pradesh students due to sudden gushing of waters from a Dam in Mandi District of Himachal Pradesh, or the very recent stampede as in Patna due to poor management, control, supervision and administration of such events/gatherings, and/or even instances of custodial deaths.

Irrespective of whether the claim is established as one coming within the ambit of a tortious claim or not, just the very occurrence of death of the victim in surrounding circumstances of a possible tortious claim or natural disaster, the victim's family, be it death or injury, must be provided with a mandatory minimum statutory sum to avoid destitution. It must be a Minimum statutory No Fault regime.

The scope of the Act needs to be widened in this regard to take within its fold such species also and in particular founded on a No fault regime without taking away the right of the claimants to pursue a claim based on fault alongside, subject to a set-off of the No Fault sum received under this new regime.

Apart from No fault minimum statutory sum payable to claimants/victims, the claimants/victims ought to be entitled to pursue independent claim based on 'fault liability' also.

JURISDICTION/FORUM

As on date Fatal Accidents Act claims would have to be laid before civil courts alone. In case of MACT claims, a special tribunal has been constituted. In respect of consumer complaints, where the specie/cause of action can be brought under 'deficiency in service' of a service provider, they go before the Consumer Forums. While in respect of motor accidents under Sec.175 of MV Act,1988 claims other than before MACT is barred (as affirmed by Supreme Court in ***The Chairman, Thiruvalluvar Transport Corporation v The Consumer Protection Council, 1995 (2) SCC 479***), in respect of consumer complaints as per Sec.3 of Consumer Protection Act,1986, a relief under this Act is not in derogation but in addition to other reliefs. WC claims of workmen (now christened as Employees' Compensation Act,1923) also belong to WC Commissioners, except under Sec.167 of MV Act,1988 the claimant/victim can make a choice to go before MACT or WC Commissioner.

In respect of all other tortious acts, the claimants/victims have the need/option to before a civil court where private actionable claims arise and/or before a Constitutional court where a State or Authority is involved.

Fatal Accidents Act, 1855 contemplates a 'suit or action'. In English law, such expressions meant different things where there were law courts and courts of equity, until they were all merged into one under Supreme Court of Judicature. In India 'suit or action' mean the same thing viz. 'suit'. A civil suit necessarily envisages ad valorem court fees and it also consumes time for disposal.

Hence, there is a certain need for specialized tribunals or forums to be created for this purpose. MACTs are possessed of trained personnel in the field of assessing evidence for 'neglect or fault'. The procedure is summary in nature where mere preponderance of probabilities may suffice. If so, the author feels that MACTs could be vested with the authority to hear the claims relatable to Fatal Accidents Act also. May be more tribunals have to be constituted and pendency of MCOPs did not detain the vesting of authority for handling such claims because the additional burden from these claims may not be so huge. On the other hand, the existing personnel being trained personnel exposed not only to the precept and practice of determining liability based on fault, they are also exposed to art of assessing compensation as well. But equally, there could be separate/specialised Tribunals constituted under the new legislation if it is felt that MACTs were already overburdened and may not provide the requisite speedy disposals. But it is undeniable that there is dire need for specialised forums to handle the specie of claims coming under the umbrella of this new legislation.

In relation to assessing compensation, as held by the Supreme Court in **Latha Wadhwa –VS- State of Bihar 2001 (8) SCC 197**, the principles obtaining in MACTs would suffice to support the awards. Fatal Accidents Act does not provide for any formula for assessment and in the new legislation a simple use of expression 'Just compensation' (as in Sec. 168 of MV Act,1988) as is now well appreciated and understood, may suffice, to support awards/compensation based on fault liability.

LEGAL REPRESENTATIVES

One of the basic lacuna identified in relation to Fatal Accidents Act is the restricted or closed number of persons held entitled to pursue a remedy such as widow, widower, parent, child etc. It has been felt that in Indian social conditions such a restricted definition and that too identified persons would exclude dependents who may not come within the ambit of the identified lot. This is one of the aspects highlighted for a changed dispensation. Now, the expression used in MV Act,1988 is 'legal representative' and the Supreme Court has in **Gujarat State Road Transport Corporation v Ramanbhai Prabhatbhai 1987 (3) SCC 234**, the said expression had a wider connotation, wider than 'legal heir'. Hence, if it was demonstrated that even foster son, foster parents were part of the family and were dependent on the deceased, they too can legitimately seek compensation just a brother or sister could do. While the expression 'legal representative' as already understood may serve the cause, it is felt however in the wake of changing societal conduct and mores even 'live-in' relationships may need recognition, as say under Domestic Violence Act. A laudable concept it may be. To accommodate this group, the expression 'legal representative' may not suffice. In **Shepherd v Post Office** Otton LJ had suggested

"I too would question whether there is any need for such an elaborate listing of entitled dependents and it would be simpler if Parliament were persuaded to provide that 'any person is entitled to a claim who can show a relationship of dependency' and thus dispense with the lists."

Pursuant to such pronouncements even in Fatal Accidents Act (in England) changes were proposed to widen the persons who would be entitled to pursue such claims. Since Remarriage is now accepted as socially welcome, it should not be a fetter or hurdle to seek Just compensation. So, this author feels a definition may have to be worked out, to bring within its fold all these aspects and a generic definition may be called for rather than identification of dependents.

TERRITORIAL JURISDICTION

To pursue claims under Fatal Accidents Act, Sec.20 CPC applies as on date. Hence the place where the occurrence takes place or where the defendant resides may be the place to sue. However, the

claimants/victims may find it difficult. As under Sec.166 of MV Act,1988, jurisdiction could be vested where the claimants reside also and leave it to their choice to sue where they choose to for their convenience.

In addition to this aspect, there may be need for vesting such Tribunals itself the power to transfer claims before them to even outside the State as in WC Claims where the WC Commissioners can receive an application and transfer the claim outside the State at the instance of parties. This would avoid the need for parties to invoke either Sec.24 CPC before High Courts or Sec.25 CPC before Supreme Court. A simple devise of this genre would rid the need and avoid litigation before higher courts in this regard as well.

LIMITATION

Previously, under Fatal Accidents Act, 1855, to begin with, the limitation period was 1 year for lodging such claims. That was deleted and as on date there is no specific period of limitation under Fatal Accidents Act. But it does not mean that there is no period of limitation at all, as in MACT claims, where also Sec.166(3) of MV Act,1988 stood deleted on and from 14/11/1994 under Act 56 of 1994. Courts have consistently ruled that limitation period for tortuous claims was relatable to Art.82 of Limitation Act,1963, which was two years from the date of wrong/cause of action.

It is to be noted that in relation to claims arising due to wrong doing by the State or Authority, Art.82 may not be a fetter. The right to claim compensation is premised as a 'constitutional tort' a separate specie by itself and therefore there is no period of limitation at all, it would appear. In case of say electrocution or fall into a man hole or into an open bore well, where the State or a Public Authority maybe in neglect or fault, the claim could be pursued without bar of limitation subject of course to laches as construed in Writ Petitions.

It is only in case of claims against private wrongs that Art.82 is being pressed into service.

In case of MACT claims also, initially under MV Act,1939, Sec.110-A had a period of limitation of 6 months with unlimited period with power to MACTs to condone delay for sufficient cause. Then under Sec.166 of MV Act,1988, it was fixed at 12 months and then a further maximum period of 12 months for condoning delay beyond which no claims could arise (***Vinod Gurudas Raikar v National Insurance Co Ltd AIR 1991 SC 2156***). As per Act 56 of 1994 vide sub-section (3) of Sec.166 was deleted from MV Act,1988 on and from 14/11/1994 and it has been ruled by the Supreme Court in ***Dhannalal v D.P.VijayVargiya 1996 (4) SCC 652*** that since limitation is procedural there shall be no period of limitation for MACT claims if they were instituted after 14/11/1994. Hence, it is now settled law that MACT claims have no period of limitation at all irrespective of whether the accidents arose prior to 14/11/1994 or after, except that claims ought to be filed after 14/11/1994.

Applying the same analogy to Fatal Accidents Act claims, could it be argued that upon deletion of period of limitation and there being no period of limitation under Fatal Accidents Act itself, application of Art.82 of Limitation Act,1963 could be excluded from application. Fatal Accidents Act is a special law and a 'substantive' law as is understood. It does not contain a period of Limitation. If so, why should the general law of limitation apply when the special law is silent, just as in the case of MV Act,1988. That is a question to ponder for the courts in the land, even while a new legislation needs to be brewing.

Notwithstanding the above submission, it is felt that in the face of a new Fatal Accidents Act being envisaged and introduced, it would be advisable to introduce a specific period of limitation of say 5 years which may suffice for such claims for the claimants ought to be vigilant anyway. Such a specific provision may rid the anomalies expressed above and introduce clarity for all times to come.